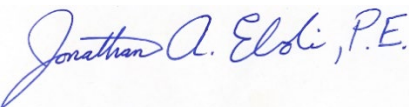


OS-299 (10-22)  pennsylvania DEPARTMENT OF TRANSPORTATION www.penndot.pa.gov	TRANSMITTAL LETTER	PUBLICATION: Pub 93 – 2025 Edition
		DATE: 2/26/2025
SUBJECT: Policy and Procedures for the Administration of Consultant Agreements, Publication 93, 2025 Edition		
INFORMATION AND SPECIAL INSTRUCTIONS: Effective immediately, this manual shall be used by PennDOT personnel, municipalities and consultants to prepare and administer consultant agreements. This publication is available on PennDOT’s internet web page, www.penndot.gov. Comments or questions concerning this manual are to be directed to the Bureau of Design and Delivery’s Contract Management Division.		
CANCEL AND DESTROY THE FOLLOWING: Publication 93 (December 2022) Policy and Procedures for the Administration of Consultant Agreements List of Strike Off Letters and Clearance Transmittals: H-24-039; SOL 430-24-01	ADDITIONAL COPIES ARE AVAILABLE FROM: ☒ PennDOT website - www.penndot.pa.gov <i>Click on Forms, Publications & Maps</i> APPROVED FOR ISSUANCE BY: Michael Carroll – Secretary of Transportation By:  Jonathan A. Eboli, P.E. - Acting Chief Executive, Highway Administration	

Substantial Revisions			
Publication 93 (2025)			
Policy and Procedures for the Administration of Consultant Agreements			
Chapter 1 - Consultant Requirements			
Section	Sub section	Title	Comment
Chapter 1.1		Introduction	No Change
Chapter 1.2	1.2.1	Consultant Registration Process	No Change
	1.2.2	Municipality Registration Process	No Change
Chapter 1.3		Consultant Quality Plan	No Change
Chapter 1.4		Certificate of Authority to Do Business	No Change
Chapter 1.5		Engineering Involvement Restrictions	No Change
	1.5.1	Construction Inspection	No Change
Chapter 1.6		Conflict of Interest	No Change
Chapter 1.7		Adverse Interest Act	No Change
Chapter 2 – Selection Process Procedures			
Section	Sub section	Title	Comment
Chapter 2.1	2.1.1	Normal Selection Procedures	No Change
	2.1.2	Modified Selection Procedures	No Change
Chapter 2.2		Identifying Need for Consultant Services	No Change
	2.2.1	Right-of-Way Acquisition Services	No Change
	2.2.2	Photogrammetry Services	No Change
	2.2.3	Consultant Management Project Manager (CMPM) and Review Assistance Information	No Change
	2.2.4	Construction Management Support Service	No Change
	2.2.5	Consultant Inspection	No Change
	2.2.6	Highway Construction Design Professional Services Matrix	No Change
Chapter 2.3	2.3.1	ECMS Setup	No Change
	2.3.2	Planned Project	No Change
	2.3.3	Advertisement	Revised NECEPT certification language per 12/5/23 email from Tim Oswalt (see "Transportation Construction Inspection Advertisements" on page 2.14)
	2.3.4	Agreement Clarification Forums	No Change
Chapter 2.4		Statement of Interest (SOI)	No Change
	2.4.1	Disqualification of a SOI	No Change
Chapter 2.5	2.5.1	Scope of Work (SOW)	No Change
	2.5.2	Department Estimate	No Change
Chapter 2.6		IO Generates Shortlist	No Change
Chapter 2.7		Technical Proposal	No Change
	2.7.1	Project Specific Quality Assurance/Quality Control (QA/QC) Plan	No Change
	2.7.2	Worker Protection and Investment Certification	No Change

Chapter 2.8		IO Generates Final Ranking	No Change
	2.8.1	IO Consultant Selection Committee	No Change
	2.8.2	Normal Selection Procedures	No Change
	2.8.3	Modified Selection Procedures	No Change
	2.8.4	Final Ranking Process	No Change
	2.8.5	Submission Deadlines	No Change
	2.8.6	Ranking Multiple Advertisements	No Change
Chapter 2.9	2.9.1	CO Approval Committee	No Change
	2.9.2	CO Approval Committee Acts on District Ranking	No Change
Chapter 2.10	2.10.1	Scope Clarification Meeting	No Change
	2.10.2	Finalizing Tech Proposal	No Change
	2.10.3	IO Review/Evaluate Technical Proposal	No Change
	2.10.4	Price Proposal	No Change
Chapter 2.11		Evaluating and Negotiating Engineering Agreements	No Change
Chapter 2.12		Legal Agreement Created	No Change
	2.12.1	Fiscal Documents	No Change
Chapter 2.13		Consultant, Deputy Secretary, Chief Counsel, Comptroller Approve Legal Agreement	No Change
	2.13.1	Consultant	No Change
	2.13.2	Commonwealth Contractor Responsibility Program (CCRP)	No Change
	2.13.3	Comptroller	No Change
Chapter 2.14		PennDOT Executes Agreement	No Change
Chapter 2.15		IO Issues NTP	No Change
Chapter 3 – Selection Process Reference Material			
Section	Sub section	Title	Comment
Chapter 3.1		Introduction	No Change
Chapter 3.2	3.2.1	Project Specific Agreement	No Change
	3.2.2	Open End Agreement	Revised Capacity Limits Table for District Non-Project Specific Open-end Agreements per 12/23/24 email from M. Harter (see page 3.2). Increased the maximum dollar amounts for Open End Agreements and individual work orders per 12/23/24 email from M. Harter (see page 3.3)
Chapter 3.3	3.3.1	3.3.1 – Introduction	No Change
	3.3.2	Sole Source Selection Procedures	Revised title to "Deputy Secretary for Highway Administration" per 11/4/24 email from B. Basom (see "Sole Source Approval" on page 3.6)
	3.3.3	Emergency Selection Procedures	No Change
Chapter 3.4	3.4.1	Considerations for Shortlisting/Final Ranking Consultants	No Change
	3.4.2	Documenting Selection Process	No Change
	3.4.3	Conduct Oral Presentations	No Change
	3.4.4	Debriefing	No Change

Chapter 3.5		Method of Payment	Revised Chart 3.2 per 11/4/24 email from B. Basom (see Chart 3.2 on page 3.10)
	3.5.1	Cost Plus Fixed Fee Method	No Change
	3.5.2	Lump Sum Method	No Change
	3.5.3	Cost Per Unit of Work Method	No Change
	3.5.4	Specific Rate of Compensation Method	No Change
		Specific Rate of Compensation - Construction Inspection	No Change
Chapter 3.6	3.6.1	Introduction	No Change
		Pre-Award Evaluation	No Change
	3.6.2	Payroll	No Change
	3.6.3	Overhead Rate	No Change
	3.6.4	Fixed Fee or Profit	No Change
	3.6.5	Escalation	No Change
	3.6.6	Direct Costs Other than Payroll	No Change
	3.6.7	Direct Costs of Services and Work by Others	No Change
	3.6.8	Total Budget Amount per Method of Payment per Categories	No Change
	3.6.9	Review for DBE Goal Compliance	No Change
	3.6.10	Project Schedule	No Change
Chapter 3.7	3.7.1	Introduction	No Change
	3.7.2	Scope Clarification Meetings	No Change
	3.7.3	Staff Hour Estimating Guide	No Change
	3.7.4	Negotiation Meetings	No Change
	3.7.5	Training	No Change
	3.7.6	Negotiation Responsibility	No Change
Chapter 4 – Administration of Consultant Agreement Process			
Section	Sub section	Title	Comment
Chapter 4.1		Introduction	No Change
	4.1.1	PennDOT Conflict of Interest	No Change
Chapter 4.2		Responsibilities of the IO's Project Manager	No Change
	4.2.1	Managing Consultants	No Change
	4.2.2	Construction Project Manager	No Change
Chapter 4.3	4.3	Construction Inspection Agreements	No Change
	4.3.1	Substitutes	No Change
	4.3.2	Wage Rate Approvals	No Change
	4.3.3	Process Control	No Change
	4.3.4	Consultant Inspection Compliance Process	No Change
	4.3.5	Invoicing	No Change

Chapter 4.4		Supplementing Consultant Agreements	No Change
	4.4.1	Types of Supplements	No Change
	4.4.2	Normal Supplement	No Change
	4.4.3	Open End Time Extension Supplement	No Change
	4.4.4	Administrative (No Cost) Supplement	No Change
	4.4.5	No-Fee Supplement	No Change
	4.4.6	Express Supplement (No-Fee)	No Change
Chapter 4.5	4.5	Work Order	No Change
	4.5.1	Engineering District Work Order Quality Control Reviewer	Revised QC reviewer language per 2/8/24 email from M. Harter (see Engineering District Work Order Quality Control Reviewer on pages 4.14 and 4.15)
	4.5.2	Initiate the Work Order	No Change
	4.5.3	Multiple Work Orders on Multiple Non-Project Specific Open-End (NPS-OE) Agreements Advertised Under One Advertisement	No Change
	4.5.4	Cost Plus Fixed Fee Method of Payment Functioning like a Specific Rate of Compensation	No Change
	4.5.5	Funding	No Change
	4.5.6	CMS Quality Assurance (QA) Review	No Change
	4.5.7	Start Work	No Change
	4.5.8	Statewide Open End Agreements	No Change
	4.5.9	Processing a Work Order Closeout Amendment	No Change
	4.5.10	Scope of Work for Design Review Work Orders	No Change
	4.5.11	Work Orders for Assignments on Various Small Projects	No Change
	4.5.12	Work Order Amendment	No Change
	4.5.13	Advanced Notice to Proceed (ANTP)	No Change
Chapter 4.6	4.6.1	Program Management Committee Approval	No Change
	4.6.2	SAP Encumbrance	No Change
	4.6.3	Invoice	Revised signature authority card language per 1/3/23 and 10/2/24 emails from M. Harter (see "Approved Payment" on page 4.22)
	4.6.4	Overhead Adjustment Invoice	No Change
	4.6.5	Agreement Closeout	No Change
	4.6.6	Certificate of Completion (Federally Funded Parts only)	No Change
	4.6.7	Consultant Evaluations	No Change
	4.6.8	Semi Annual Invoice Audit	No Change
	4.6.7	Consultant Evaluations	No Change
Chapter 5 – Consultant Agreement Support			
Section	Sub section	Title	Comment
Chapter 5.1		Introduction	No Change
Chapter 5.2		Confidentiality	No Change
Chapter 5.3	5.3.1	Consultant Requirements	No Change
	5.3.2	PennDOT Requirements	No Change
Chapter 5.4			No Change
	5.4.1	Good Faith Effort to Obtain DBE Participation	No Change

	5.4.2	DBE Certification	No Change
	5.4.3	Records of DBE Participation	No Change
	5.4.4	Monitoring of DBE Consultants	No Change
	5.4.5	DBE Good Faith Effort Attainment for Consultant Agreements	No Change
Chapter 5.4	5.4.6	Evaluation of DBE Goal Attainment for Consultant Agreements	No Change
	5.4.7	Good Faith Effort Sanctions	No Change
	5.4.8	NAICS Codes with DBE Commitment Information	No Change
	5.4.9	DBE Termination Notice Requirement	No Change
Chapter 5.5		Stop Work Notification	No Change
Chapter 5.6		Violation or Breach of Contract	No Change
Chapter 5.7		Costs Incurred Outside the Legal Contract	No Change
Chapter 5.8		Design Error Process	No Change
Chapter 5.9		Indemnification	Revised Indemnification language per 4/1/24 email from M. Harter (see "Indemnification" on page 5.15)
Chapter 5.10		Insurance	Revised Insurance language per 4/1/24 email from M. Harter (see "Insurance" on pages 5.15 and 5.16)
Chapter 6 – Administering Department Sponsored Agreements (Hard Copy)			
Section	Sub section	Title	Comment
Chapter 6.1		Introduction	No Change
Chapter 6.2		Reasons for Supplements	No Change
Chapter 6.3		Guidelines for Supplements	No Change
Chapter 6.4	6.4.1	Changes in the Scope of Work	No Change
	6.4.2	Cost Overruns	No Change
	6.4.3	Agreement Closeouts	No Change
	6.4.4	Addition of Subconsultant	No Change
	6.4.5	Combination of Scope Changes and Overruns	No Change
	6.4.6	Transfer of Funds between Categories of Compensation	No Change
Chapter 6.5		Specific Procedures – Supplemental Agreements	No Change
Chapter 6.6		Specific Procedures – Work Orders	No Change
Chapter 6.7	6.7.1	Billing Intervals	No Change
	6.7.2	Estimated Progress Report	No Change
	6.7.3	District Review	No Change
	6.7.4	Invoice Processing	No Change
	6.7.5	Prompt Payment of Subconsultant/ Subcontractor Invoices	No Change
	6.7.6	Prompt Payment of Small Business Vendor Invoices	No Change
	6.7.7	Policy Governing Payments of Interest Penalties	No Change
	6.7.8	Eligibility	No Change
	6.7.9	Invoice Processing	No Change
	6.7.10	Penalties	No Change

Chapter 7 – Third Party Federal Aid Agreements

Section	Sub section	Title	Comment
Section 7.1		Introduction	No Change
Section 7.2	7.2.1	Documentation	No Change
	7.2.2	Publication 93 Policy and Procedures	No Change
Section 7.3	7.3.1	Types of Municipal Selection Processes	No Change
Section 7.3	7.3.2	Determining Need for Municipal Consultant Services	No Change
	7.3.3	Consultant Selection Procedure Approval	No Change
	7.3.4	Municipality Solicits Consultants	No Change
	7.3.5	Municipality Creates Municipal Project in ECMS	No Change
	7.3.6	Municipality Advertises Agreement in ECMS	No Change
	7.3.7	Municipal Engineer Advertisement Approval	No Change
	7.3.8	Municipality Advertises for Municipal Engineer	No Change
	7.3.9	Consultants Respond to Municipality Solicitation	No Change
	7.3.10	Consultant Submit SOI's	No Change
	7.3.11	Municipality Creates Scope of Work and Estimate in ECMS	No Change
	7.3.12	Municipality Short Lists Three Consultants (Normal Process Only)	No Change
	7.3.13	Consultants Create Technical Proposal	No Change
	7.3.14	Municipality Final Ranks Consultant	No Change
	7.3.15	Municipality submits Final Ranking to PennDOT for Approval	No Change
	7.3.16	Municipality submits Final Ranking in ECMS	No Change
	7.3.17	PennDOT Approves Selected Consultant in ECMS	No Change
	7.3.18	Consultant Finalizes Technical Proposal and Submits Price Proposal	No Change
	7.3.19	Municipality and District Review Submitted Proposals	No Change
	7.3.20	CMD Evaluates and Negotiates the Price Proposal, Prepares Legal Agreement	No Change
	7.3.21	Consultant Reviews and Signs Legal Agreement in ECMS	No Change
	7.3.22	Municipality Executes Legal Agreement in ECMS	No Change
	7.3.23	Municipality Issues NTP	No Change
Section 7.4		Managing the Consultant	No Change
Section 7.5	7.5.1	Municipal ECMS Agreements	No Change
	7.5.2	Municipal Agreements Created Outside of ECMS	No Change
Section 7.6		Invoicing	No Change
Section 7.7		Closing out the Agreement	No Change

Publication 93 Appendices		
Appendix Document		Comment
1A	Request for Consideration for Engineering Involvement Restrictions	No Change
1B	Construction Inspection Quality Assurance Plan	No Change
2A	Justification to Use a Consultant	No Change
2B	Bureau of Human Resources Sample Memo	No Change
2C	Office of Administration Sample Memo	No Change
2D	Commonwealth Computer System Accounts User Agreement	No Change
2E	Review of Scope of Work	No Change
2F	CO Consultant Selection Committee Approval Process	No Change
2G	Review of Technical Proposal	No Change
2H	Consultant Selection Meeting Memo Sample	No Change
3A	Sole Source Fact Sheet and Checklist for Services	No Change
3B	Negotiation Position Memorandum (NPM)	No Change
3C	FHWA Order 4470.1A Appendix A	No Change
3D	PennDOT Executive Compensation Statement (PEC)	No Change
3E	DBE Monitoring Form	No Change
3F	Mutual Gains Negotiations	No Change
3G	Negotiation Engineer Delegation Sample Memo	No Change
3G	PennDOT Safe Harbor Overhead Rate Compliance Components	No Change
3H	Safe Harbor Overhead Rate Certification	No Change
4A	Process Control for Consultant Inspection Contract Issues	No Change
4B	Guidelines for Determining Fee or No Fee	No Change
4C	Express Supplement (No Fee) Process Flow	No Change
4D	Express Supplement (No Fee)(Authorization for Consultant Contract Work)	No Change
4E	Example Quality Control Certification for Express Supplement (No Fee)	No Change
4F	Procedures for Closing Out Electronic Parts/Work Orders	No Change

4G	Consultant Inspector Hours and Mileage Log	No Change
4H	Excerpt-"Managing Consultants" course Lesson 5	No Change
4I	Supplementing Consultant Agreements	No Change
4J	Advanced Notice to Proceed	No Change
5A	Confidentiality Certification	No Change
5B	DBE Commercially Useful Function (CUF) Report	No Change
5C	Evaluation of Overall DBE Goal Attainment Notice	No Change
5D	Certificate of Insurance	No Change
6A	Supplemental Agreement Request	No Change
6B	Project Specific Work Order Request	No Change
7A	A Guide to Policy and Procedure for Consultant Selection	No Change
7B	Municipal Engineer Advertisement Example	No Change
7C	District Estimate Summary for Municipal Agreement	No Change
7D	Municipal Request for Supplemental Agreement	No Change
7E	Notice to Proceed Sample Letter	No Change
7F	Past Performance Report (Non CI)	No Change
7G	Past Performance Report - Construction Inspection	No Change
7H	Certificate of Completion	No Change
Worksheets		
Worksheet Document		Comment
A	Paper Price Proposal Submission Design n CI	No Change
B	Paper Price Proposal Submission NBIS	No Change



Pennsylvania
Department of Transportation

Publication 93

Policy and Procedures for the Administration of Consultant Agreements

Engineering & Construction Management System (ECMS)

Prepared by:
Pennsylvania Department of Transportation
Bureau of Design and Delivery
Contract Management Division



Pennsylvania
Department of Transportation

PUB 93 (02-25)

Table of Contents

<u>Preface</u>	<i>i</i>
Introduction	i
List of Acronyms.....	iii
Definitions	iv
<u>Chapter 1 – Consultant Requirements</u>	1.1
1.1 – Introduction	1.1
1.2 – Business Partner Registration Process	1.1
1.3 – Consultant Quality Plan.....	1.2
1.4 – Certificate of Authority to Do Business	1.4
1.5 – Engineering Involvement Restrictions.....	1.5
ENGINEERING INVOLVEMENT RESTRICTIONS MATRIX	1.6
DEPARTMENT AGREEMENT CONTAINING MULTIPLE PROJECTS (FOR SUBCONSULTANTS) TABLE	1.10
1.5.1 - Construction Inspection	1.10
1.6 - Conflict of Interest.....	1.11
1.7 – Adverse Interest Act	1.11
<u>Chapter 2 – Selection Process Procedures</u>	2.1
2.1 – Introduction	2.1
2.1.1 – Normal Selection Procedures	2.1
2.1.2 – Modified Selection Procedures	2.2
2.2 – Identifying Need for Consultant Services	2.3
2.2.1 – Right-of-Way Acquisition Services.....	2.4
2.2.2 – Photogrammetry Services	2.4
2.2.3 – Consultant Management Project Manager (CMPM)	2.5
and Review Assistance Information	
2.2.4 – Construction Management Support Service	2.7
2.2.5 – Consultant Inspection	2.8
2.2.6 – Highway Construction Design Professional Services Matrix	2.9
2.3 – Creation and Announcement of Anticipated Project.....	2.10
2.3.1 – ECMS Setup	2.10
2.3.2 – Planned Project	2.11
2.3.3 – Advertisement	2.11
2.3.4 – Agreement Clarification Forums	2.15
2.4 – Statement of Interest (SOI)	2.15
2.4.1 – Disqualification of a SOI	2.16
2.5 – Scope of Work (SOW) and Department Estimate	2.16
2.5.1 – Scope of Work (SOW)	2.16
2.5.2 – Department Estimate	2.17
2.6 – IO Generates Shortlist.....	2.17
2.7 – Technical Proposal.....	2.18
2.7.1 – Project Specific Quality Assurance/Quality Control	2.18
(QA/QC) Plan	
2.7.2 – Worker Protection and Investment Certification	2.19
2.8 – IO Generates Final Ranking	2.20
2.8.1 – IO Consultant Selection Committee.....	2.20
2.8.2– Normal Selection Procedures	2.20
2.8.3– Modified Selection Procedures	2.20
2.8.4– Final Ranking Process	2.20
2.8.5– Submission Deadlines	2.21
2.8.6– Ranking Multiple Advertisements.....	2.22
2.9 – CMD Publishes Final Ranking	2.22
2.9.1 – CO Approval Committee	2.22
2.9.2 – CO Approval Committee Acts on District Ranking	2.23

2.10 – Finalizing Technical Proposal and Submitting Price Proposal.....	2.24
2.10.1 – Scope Clarification Meeting	2.24
2.10.2 – Finalizing Tech Proposal	2.25
2.10.3 – IO Review/Evaluate Technical Proposal	2.25
2.10.4 – Price Proposal.....	2.25
2.11 – Evaluating and Negotiating Engineering Agreements	2.26
2.12 – Legal Agreement Created	2.26
2.12.1 – Fiscal Documents	2.27
2.13 – Consultant, Deputy Secretary, Chief Counsel, Comptroller	2.27
Approve Legal Agreement	
2.13.1 – Consultant	2.27
2.13.2 – Commonwealth Contractor Responsibility Program (CCRP).....	2.30
2.13.3 – Comptroller	2.30
2.14 – PennDOT Executes Agreement	2.30
2.15 – IO Issues NTP.....	2.31

Chapter 3 – Selection Process Reference Material 3.1

3.1 – Introduction	3.1
3.2 – Agreement Type	3.1
3.2.1 – Project Specific Agreement	3.1
3.2.2 – Open End Agreement	3.1
3.3 – Selection Process	3.4
3.3.1 – Introduction	3.4
Chart 3.1 - TYPICAL SELECTION PROCEDURES FOR AGREEMENTS	3.5
3.3.2 – Sole Source Selection Procedures	3.6
3.3.3 – Emergency Selection Procedures.....	3.7
3.4 – Selecting Consultants – Qualification Based Selection	3.7
3.4.1 – Considerations for Shortlisting/Final Ranking Consultants	3.7
3.4.2 – Documenting Selection Process	3.9
3.4.3 – Conduct Oral Presentations	3.9
3.4.4 – Debriefing	3.9
3.5 – Method of Payment.....	3.10
Chart 3.2 - TYPICAL METHODS OF PAYMENT FOR AGREEMENTS	3.10
3.5.1 – Cost Plus Fixed Fee Method.....	3.11
3.5.2 – Lump Sum Method.....	3.11
3.5.3 – Cost Per Unit of Work Method	3.11
3.5.4 – Specific Rate of Compensation Method	3.11
3.6 – Price Proposal Evaluation	3.12
3.6.1 – Introduction	3.12
3.6.2 – Payroll.....	3.13
3.6.3 – Overhead Rate	3.15
3.6.4 – Fixed Fee or Profit	3.19
CHART 3.3 – MAXIMUM ALLOWABLE FEE	3.20
3.6.5 – Escalation	3.21
3.6.6 – Direct Costs Other than Payroll	3.23
Chart 3.4 – MAXIMUM COSTS ALLOWED FOR TYPICAL DIRECT COSTS	3.24
3.6.7 – Direct Costs of Services and Work by Others	3.25
3.6.8 – Total Budget Amount per Method of Payment per Categories.....	3.25
3.6.9 – Review for DBE Goal Compliance	3.26
3.6.10 – Project Schedule	3.27
3.7 – Agreement Negotiation	3.28
3.7.1 – Introduction	3.28
3.7.2 – Scope Clarification Meetings	3.28
3.7.3 – Staff Hour Estimating Guide	3.29
3.7.4 – Negotiation Meetings	3.29
3.7.5 – Training	3.29
3.7.6 – Negotiation Responsibility	3.29

Chapter 4 – Administration of Consultant Agreement Process 4.1

4.1 – Introduction	4.1
4.1.1 – PennDOT Conflict of Interest	4.1
4.2 – Responsibilities of the IO's Project Manager	4.1
4.2.1 – Managing Consultants	4.2
4.2.2 – Construction Project Manager	4.4
4.3 – Construction Inspection Agreements	4.4
4.3.1 – Substitutes	4.5
4.3.2 – Wage Rate Approvals	4.5
4.3.3 – Process Control	4.7
4.3.4 – Consultant Inspection Compliance Process	4.7
4.3.5 – Invoicing	4.7
4.4 – Supplementing Consultant Agreements	4.7
4.4.1 – Types of Supplements	4.9
Chart 4.1 – SUPPLEMENT USAGE	4.9
4.4.2 – Normal Supplement	4.10
4.4.3 – Open End Time Extension Supplement	4.11
4.4.4 – Administrative (No Cost) Supplement	4.12
4.4.5 – No-Fee Supplement	4.13
4.4.6 – Express Supplement (No-Fee)	4.13
4.5 – Work Order	4.14
4.5.1 – Engineering District Work Order Quality Control Reviewer	4.14
4.5.2 – Initiate the Work Order	4.15
4.5.3 – Work Orders on Multiple NPS-OE Agreements Advertised under one Ad	4.15
4.5.4 – Cost Plus Fixed Fee Method of Payment Functioning like a Specific Rate of Compensation	4.16
4.5.5 – Funding	4.16
4.5.6 – CMD Quality Assurance (QA) Review	4.16
4.5.7 – Start Work	4.16
4.5.8 – Statewide Open End Agreements	4.16
4.5.9 – Processing a Work Order Close-Out Amendment	4.17
4.5.10 – Scope of Work for Design Review Work Orders	4.17
4.5.11 – Work Orders for Assignments on Various Small Projects	4.17
4.5.12 – Work Order Amendment	4.18
4.5.13 – Advanced Notice to Proceed (ANTP)	4.19
4.6 – Funding	4.19
4.6.1 – Program Management Committee Approval	4.19
4.6.2 – SAP Encumbrance	4.20
4.6.3 – Invoice	4.20
4.6.4 – Overhead Adjustment Invoice	4.23
4.6.5 – Agreement Close-Out	4.23
4.6.6 – Certificate of Completion (Federally Funded Parts/Work Orders only) ...	4.24
4.6.7 – Consultant Evaluations	4.24
4.6.8 – Semi Annual Invoice Audit	4.25

Chapter 5 – Consultant Agreement Support 5.1

5.1 – Introduction	5.1
5.2 – Confidentiality	5.1
5.3 – Records and Documentation Retention	5.1
5.3.1 – Consultant Requirements	5.1
5.3.2 – PennDOT Requirements	5.1
5.4 – Disadvantaged Business Enterprise Participation	5.2
5.4.1 – Good Faith Effort to Obtain DBE Participation	5.2
5.4.2 – DBE Certification	5.3
5.4.3 – Records of DBE Participation	5.4
5.4.4 – Monitoring of DBE Consultants	5.4
5.4.5 – DBE Good Faith Effort Approval Process for Consultant Agreements	5.5
5.4.6 – Evaluation of DBE Goal Attainment for Consultant Agreements	5.9
5.4.7 – Good Faith Effort Sanctions	5.11

5.4.8 – NAICS codes with DBE Commitment Information	5.11
5.4.9 – DBE Termination Notice Requirement	5.11
5.5 – Stop Work Notification.....	5.11
5.6- Violation or Breach of Contract.....	5.12
5.7 – Costs Incurred Outside the Legal Contract.....	5.12
5.8 – Design Error Process	5.12
5.8.1 – Policy	5.13
5.8.2 – Procedures	5.13
5.9 - Indemnification.....	5.15
5.10 - Insurance.....	5.15

Chapter 6 – Administering Department Sponsored Agreements **6.1** **(Hard Copy)**

6.1 – Introduction	6.1
6.2 – Reasons for Supplements	6.1
6.3 – Guidelines for Supplements	6.2
6.4 – Procedures	6.3
6.4.1 – Changes in the Scope of Work	6.3
6.4.2 – Monitoring of Costs	6.3
6.4.3 – Agreement Close-Outs	6.4
6.4.4 – Addition of Subconsultant	6.4
6.4.5 – Combination of Scope Changes and Monitoring of Costs.....	6.5
6.4.6 – Transfer of Funds between Categories of Compensation.....	6.5
6.5 – Specific Procedures – Supplemental Agreements	6.5
6.6 – Specific Procedures – Work Orders	6.5
6.7 - Invoice Procedures	6.6
6.7.1 – Billing Intervals.....	6.6
6.7.2 – Estimated Progress Report.....	6.6
6.7.3 – District Review	6.6
6.7.4 – Invoice Processing.....	6.7
6.7.5 – Prompt Payment of Subconsultant/Subcontractor Invoices	6.7
6.7.6 – Prompt Payment of Small Business Vendor Invoices	6.7
6.7.7 – Policy Governing Payments of Interest Penalties	6.8
6.7.8 – Eligibility	6.8
6.7.9 – Invoice Processing.....	6.8
6.7.10 – Penalties	6.8

Chapter 7 – Third Party Federal Aid Agreements **7.1**

7.1 – Introduction	7.1
7.2 – General Requirements	7.2
7.2.1 – Documentation.....	7.2
7.2.2 – Publication 93 Policy and Procedures.....	7.2
7.3 – Municipal Selection Process Procedures.....	7.2
7.3.1 – Types of Municipal Selection Processes	7.2
Chart 7.1 – Municipal Process Flow Diagrams	7.4
7.3.2 – Determining Need for Municipal Consultant Services.....	7.10
7.3.3 – Municipal Selection Procedure Approval	7.11
7.3.4 – Municipality Solicits Consultants	7.12
7.3.5 – Municipality Creates Municipal Project in ECMS	7.12
7.3.6 – Municipality Advertises Agreement in ECMS.....	7.14
7.3.7 – Municipal Engineer Advertisement Approval	7.15
7.3.8 – Municipality Advertises for Municipal Engineer.....	7.15
7.3.9 – Consultants Respond to Municipality Solicitation.....	7.16
7.3.10 – Consultants Submit SOL's	7.16
7.3.11 – Municipality Creates Scope of Work and Estimate in ECMS	7.16
7.3.12 – Municipality Shortlists Three Consultants (Normal Process Only).....	7.16
7.3.13 – Consultant Creates Technical Proposal.....	7.17
7.3.14 – Municipality Final Ranks Consultants	7.17

7.3.15 – Municipality Submits Final Ranking to PennDOT for Approval	7.17
7.3.16 – Municipality Submits Final Ranking in ECMS	7.17
7.3.17 – PennDOT Approves Selected Consultant in ECMS	7.18
7.3.18 - Consultant Finalizes Technical and Submits Price Proposal.....	7.18
7.3.19 – Municipality and District Reviews Submitted Proposals	7.18
7.3.20- CMD Evaluates and Negotiates Price Proposal	7.19
Prepares Legal Agreement	
7.3.21 - Consultant Reviews and Signs Legal Agreement in ECMS	7.19
7.3.22- Municipality Executes Legal Agreements in ECMS.....	7.20
7.3.23 – Municipality Issues NTP	7.20
7.4 – Managing the Consultant	7.20
7.5 – Supplementing the Agreement	7.21
7.5.1 – Municipal ECMS Agreements	7.21
7.5.2 – Municipal Agreements Created Outside of ECMS.....	7.22
7.6 – Invoicing	7.24
7.7 – Closing out the Agreement	7.25

List of Appendices

<u>Appendix 1A Request for Consideration for Engineering Involvement Restrictions</u>	(1.5)
<u>Appendix 1B Construction Inspection Quality Assurance Plan</u>	(1.5.1) (7.1)
<u>Appendix 2A Justification to Use a Consultant</u>	(2.2)
<u>Appendix 2B Bureau of Human Resources Sample Memo</u>	(2.2)
<u>Appendix 2C Office of Administration Sample Memo</u>	(2.2)
<u>Appendix 2D Commonwealth Computer System Accounts User Agreement</u>	(2.2.3)
<u>Appendix 2E Review of Scope of Work</u>	(2.5.1)
<u>Appendix 2F CO Consultant Approval Committee Approval Process</u>	(2.9.2)
<u>Appendix 2G Review of Technical Proposal</u>	(2.10.3) (4.5.2) (6.3) (7.3.19) (7.5.2)
<u>Appendix 2H Dist/IO Consultant Selection Meeting Memo Sample</u>	(2.8.1)
<u>Appendix 3A Sole Source Fact Sheet and Checklist for Services</u>	(3.3.2)
<u>Appendix 3B Negotiation Position Memorandum</u>	(3.6.1) (4.5.2)
<u>Appendix 3C FHWA Order 4470.1A Appendix A</u>	(3.6.3)
<u>Appendix 3D DBE Monitoring Form</u>	(3.6.7) (5.4.4) (5.4.5)
<u>Appendix 3E Mutual Gains Negotiations</u>	(3.7.1)
<u>Appendix 3F Negotiation Engineer Delegation Sample Memo</u>	(3.7.6)
<u>Appendix 3G Safe Harbor OH Rate Compliance Components</u>	(3.6.3)
<u>Appendix 3H Safe Harbor Overhead Rate Certification</u>	(3.6.3)
<u>Appendix 4A Process Control for Construction Inspection Contract Issues</u>	(4.3.3)
<u>Appendix 4B Guidelines to Determine When Fee Should be Included in a Supplemental Agreement</u>	(3.6.4) (4.4.2) (4.4.5)
<u>Appendix 4C Express Supplement (No-Fee) Process Flow</u>	(4.4.6)
<u>Appendix 4D Express Supplement (No-Fee)(Authorization for Consultant Contract Work)</u>	(4.4.6)
<u>Appendix 4E Example Quality Control Certification for Express Supplement (No Fee)</u>	(4.4.6)
<u>Appendix 4F Procedures for Closing Out Electronic Parts/Work Orders</u>	(4.6.5)

Appendix 4G Consultant Inspector Hours and Mileage Log	(4.3.5)
Appendix 4H Excerpt – “Managing Consultants” course Lesson 5	(4.6.3)
Appendix 4I Supplementing Consultant Agreements	(4.4)
Appendix 4J Advanced Notice to Proceed (ANTP)	(4.5.13)
Appendix 5A Confidentiality Certification	(2.2.3) (5.2)
Appendix 5B DBE Commercially Useful Function (CUF) Report	(5.4.4)
Appendix 5C Evaluation of Overall DBE Goal Attainment Notice	(5.4.6)
Appendix 5D – Certificate of Insurance	(5.9)
Appendix 6A Supplemental Agreement Request	(6.3)
Appendix 6B Project Specific Work Order Request	(6.3)
Appendix 7A Policy and Procedure for Consultant Selection	(7.3.3)
Appendix 7B Municipal Engineer Advertisement Example	(7.3.7)
Appendix 7C District Estimate Summary for Municipal Agreement	(7.5.2)
Appendix 7D Municipal Request for Supplemental Agreement	(7.5.2)
Appendix 7E Notice to Proceed Sample Letter	(6.5) (7.5.2)
Appendix 7F D-429 Past Performance Report (Non-Construction Inspection)	(6.4.2) (6.7.3) (7.7)
Appendix 7G D-429 Past Performance Report – Construction Inspection	(7.7)
Appendix 7H Certificate of Completion	(6.7.3) (7.7)

List of Worksheets

Worksheet A Paper Price Proposal Submission Design and Construction Inspection	(6.4.1) (7.5.2)
Worksheet B Paper Price Proposal Submission NBIS	(7.5.2)

Note: Excel spreadsheets of these worksheets are located on the Shared Drive at:

[\\pdfpfap2k01\data\penndot shared\Bureau of Design\Design Services Division\Consultant Agreement Section \Publications\Worksheet A Paper Price Proposal Submission Design n CI.xls](#)

[\\pdfpfap2k01\data\penndot shared\Bureau of Design\Design Services Division\Consultant Agreement Section\Publications\Worksheet B Paper Price Proposal Submission NBIS.xls](#)

Preface

Introduction

These policies and procedures apply to the Prime Consultant and all subconsultants.

It is the Prime Consultant's responsibility to ensure that all contract provisions are included in their contract with their subconsultants.

A "Standard Agreement between Consultant and Subconsultant for Professional Services on Pennsylvania Department of Transportation Agreements" is available in the File Cabinet in ECMS as a basis for subconsultant contracts. This format is not mandatory at this time. However, if the standard agreement between consultant and subconsultant is utilized, it must be signed and attached to the prime's technical proposal in ECMS.

This Publication provides policy and assistance in the procurement and administration of Consultant Agreements. This manual is intended to describe the methodology of administering Consultant Agreements, not how to operate the Engineering and Construction Management System (ECMS). For instruction on how to operate ECMS please refer to the ECMS website, <https://www.ecms.penndot.pa.gov/ECMS/>.

Unless otherwise noted, any deviations from this policy will need approval by the Deputy Secretary of Highway Administration or authorized designee and, where applicable, the Federal Highway Administration.

Any further guidance beyond topics contained herein can be found in the Department of General Service's Field Procurement Handbook, the Brooks Act and various federal guidelines.

Since the introduction of ECMS in 2000, PennDOT has been transitioning from a paper-based (or hard-copy) method of record-keeping to an electronic method. For this reason we are currently maintaining parallel systems of hard-copy and electronic files. Therefore, the administration of the two systems has been addressed in this Publication separately by addressing ECMS Consultant Agreements in Chapters 1 through 5, Administering Department Sponsored Agreements (Hard Copy) in Chapter 6 and Third Party Federal Aid Agreements in Chapter 7. As of 2014, Third Party Federal Aid Agreements are also transitioning from a paper-based method of record-keeping to an electronic method. For this reason, we are currently maintaining parallel systems of hard-copy and electronic files. Both of these methods are covered in Chapter 7.

Normally, consultant work and services are required to assist the Engineering Districts in meeting their transportation improvement program. However, the Central Office Bureaus also use consultant work and services for a variety of reasons. This publication indicates that the Initiating Organization (Engineering District or a Central Office Bureau) is responsible for the various functions in the procurement and administration of Consultant Agreements.

Every step of the consultant selection and management process is predicated on the goal of producing a quality transportation improvement for the public at a fair and reasonable cost, within the project schedule, and also in a cost-effective manner. This publication will guide you through the four steps that make this possible:

- Preparing for Consultant Agreements
- Selecting Consultants
- Administering Consultant Agreements
- Managing Consultants

The Department provides assistance to all Municipalities/sponsors within the Commonwealth in the maintenance of their locally owned transportation systems. For this reason Chapter 7, entitled "Third Party

Federal Aid Agreements”, has been included to assist District Project Managers and Municipalities. Because the Contract Management Division needs to be integrally involved in third party Consultant Agreements funded by Federal funds, this section describes specific procedures in this regard. However, Consultant Agreements funded by other than federal funds can also be administered by District Project Managers as described in Chapter 7. ECMS can also be used for such Agreements.

This publication references a number of items that are identified as confidential. Good judgment is to be exercised at all times in order to allow all consultants an equal opportunity for doing business with the Department, while maintaining their individual integrity. These confidential items will be discussed in Chapter 5. Once the Department has fully executed a Legal Agreement, it is viewable by the public. However, the Technical Proposal and Price Proposal hyperlinks are not operable.

Since the procurement of contractual work and services requires a specialized knowledge of laws, regulations, program needs, policies and specific procedures, contract documents are subject to review by numerous individuals both within and outside of the Department. Some of the roles and responsibilities of primary players in this process are as follows:

Program Management Committee	The part of the Center for Program Development and Management that reviews Agreement information for conformance to established program costs.
Engineering District Office	The eleven offices that serve as the Initiating Organization for the vast majority of PennDOT’s Agreement actions.
Contract Management Division	The section of the Bureau of Design and Delivery that is tasked with maintaining and applying Consultant Agreement policy.
Consultant	A privately-owned entity that responds to information published by PennDOT in order to assist the Department in accomplishing its mission.
Deputy Secretary for Highway Administration	The office that acts on behalf of PennDOT for Agreement processing.
Office of the Comptroller	Representatives of the Office of the Budget tasked with overseeing the Department’s operation to assure conformance with fiscal requirements.
Office of Chief Counsel	Representatives of the Office of General Counsel tasked with overseeing the Department’s operation to assure conformance with legal requirements.
Federal Highway Administration	The Federal Highway Administration (FHWA) is a part of the U.S. Department of Transportation and is headquartered in Washington, D.C., with field offices across the United States. FHWA carries out the Federal highway programs in partnership with the State and local agencies to meet the Nation’s transportation needs. FHWA reserves the right to participate in any or all selection processes on any federal aid project

List of Acronyms

ACE	Assistant Construction Engineer
ACEC-PA	American Council of Engineering Companies of PA
ADE	Assistant District Executive
ADEC	Assistant District Executive – Construction
ADED	Assistant District Executive – Design
AMRL	AASHTO Materials Reference Laboratory
ANTP	Advanced Notice to Proceed
BEO	Bureau of Equal Opportunity
BODD	Bureau of Design and Delivery
BP-ID	Business Partner Identification
CMD	Contract Management Division
CAS Summary	Consultant Agreement System Summary
CCRP	Commonwealth Contractor Responsibility Program
CEE	Categorical Exclusion Evaluation
CI	Construction Inspection
CM	Construction Management
CMPM	Consultant Management Project Manager
CO	Central Office
CRP	Contractor Responsibility Provision
CRR	Contractor Responsibility Request
CUF	Commercial Useful Function
DBE	Disadvantaged Business Enterprise
DE	District Executive
DGS	Department of General Services
DM	Design Manual
EA	Environmental Assessment
ECMS	Engineering and Construction Management System
EDMS	Electronic Data Management System
EIS	Environmental Impact Statement
EPR	Estimated Progress Report (Paper Invoice)
FAPG	Federal-Aid Policy Guide
FAR	Federal Acquisition Regulation
FHWA	Federal Highway Administration
FMIS	Financial Management Information System
FONSI	Finding of No Significant Impact

FPN	Federal Project Number
IO	Initiating Organization (Engineering District, Central Office Bureau, etc.)
IRT	Interdisciplinary Review Team
MPMS	Multi-Modal Project Management System
NAICS	North American Industry Classification System
NBIS	National Bridge Inspection Standards
NCM	National Compensation Matrix
NHS	National Highway System
NPM	Negotiation Position Memorandum
NPS-OE	Non-Project Specific Open End
NTP	Notice to Proceed
PA UCP	Pennsylvania Unified Certification Program
PDA	Predetermined Amount
PennDOT	Pennsylvania Department of Transportation
PM	Project Manager
PMC	Program Management Committee
PS&E	Plans, Specifications & Estimate
PSS	Photogrammetry and Surveys Section
QA	Quality Assurance
QA/QC	Quality Assurance/Quality Control
QBS	Quality Based Selection
QC	Quality Control
ROD	Record of Decision
RTP	Review of Technical Proposal (Appendix 2G)
SAP	Systems Application Products
SBE	Small Business Enterprise
SOI	Statement(s) of Interest
SOW	Scope of Work
SPN	State Project Number
SR	State Route
SRF	Specific Rate Factor
WBS	Work Breakdown Structure
WO	Work Order

Definitions

IO/District Project Manager – A PennDOT employee who is responsible for the project.

Prime Consultant - The contractual party providing consultant work and services pursuant to an Agreement with the Department.

Subconsultant - The party providing work and services to the prime consultant (which is providing Consultant Work and Services pursuant to an Agreement with the Commonwealth) pursuant to an Agreement with the prime consultant to which the Department is not a party. Each subconsultant agreement shall be managed in accordance with all procedures detailed in Publication 93 and terms and conditions indicated in Publication 442. Any references to “Consultant” in this Publication will be inclusive of subconsultants.

Consultant – Unless otherwise specified, this term will apply to either prime consultant or Subconsultant within this Publication.

Consultant Project Manager – An individual working for the prime consultant who is responsible for the project.

Consultant Management Project Manager (CMPM) – A consultant who performs the duties of the IO Project Manager.

Lead Design Engineer (Design-Build Contract) – The design consultant engineering firm or contractor’s personnel that are responsible for the design portion of the Design-Build project.

Quality Control Reviewer (Design-Build Contract) – The design consultant engineering firm or individuals that are responsible to manage the quality control of the Design-Build project, including the Quality Control Manager and the Alternate Quality Control Manager. The Design Quality Control Staff is allowed to be the same firm as the Lead Design Engineer.

Quality Assurance Reviewer (Department Agreement or Design-Build Contract, if applicable) – The design consultant engineering firm or individuals functioning as PennDOT and FHWA (as appropriate) representatives who check the validity of the Contractor’s Quality Plan to ensure all work is done in accordance with the Contract documents. Quality Assurance Reviewer may be Department and/or FHWA personnel, consultants under a Department Agreement, or a firm providing design services to the Design-Build Contractor (if included as a design activity in the “Special Bidding – Design Build” special provision, also known as peer reviewer). The Quality Assurance Reviewer may not be the same firm as the contractor, the Lead Design Engineer, or the Quality Control Reviewer.

Secondary Design Services Professionals (Design-Build Contract) – Other design consultant engineering firms providing design services to the Design-Build Contractor beyond roles of Lead Design Engineer or Design Quality Control Engineer.

Chapter 1 – Consultant Requirements

1.1 – Introduction

Consultants -Consultants shall be responsible for providing quality work, services and products at a fair and reasonable cost.

Consultants desiring to provide work and services on Pennsylvania Department of Transportation (PennDOT) projects must meet the requirements outlined in this chapter. PennDOT also provides a “Doing Business with PennDOT” CD that provides a PowerPoint presentation that illustrates the process that meets these requirements. A copy of this CD can be requested from the Contract Management Division (CMD) by calling 717-787-7894.

Consultants desiring to provide work or services on municipal projects must also be registered as ECMS Business Partners as outlined in this chapter.

Municipalities - Municipalities that wish to participate in a third party federal aid agreement must be registered as a Business Partner before creating an agreement in ECMS.

1.2 – Business Partner Registration Process

1.2.1 – Consultant Registration Process -Consultants desiring to provide work and services for PennDOT under a Consultant Agreement must be registered as a Business Partner before they can submit their Qualification Package or participate in the Consultant Selection Process.

PennDOT uses Engineering & Construction Management System (ECMS) to do business with consultants.

Consultants can connect to the ECMS at <https://www.ecms.penndot.pa.gov/ECMS/> and select the “Register as a Business Partner” link. Registration Instructions are provided on this web page.

This site also provides a link, “Click here for specific instructions for completing the Consultant Qualifications Package & Overhead Rate.” that will present additional information for:

- Submitting Firm’s Annual Consultant Qualifications Package
- Submitting Firm’s Overhead Information for review and approval

If a subsidiary firm is operating under the umbrella of a parent firm but still maintains a separate Federal Identification Number, the subsidiary firm must be registered separately as a Business Partner.

The burden of conformance with all licensing, regulatory and statutory requirements to perform work and services for PennDOT is the responsibility of the firm applying for registration.

After the consultant completes the Business Partner Registration Application, PennDOT will submit an “Agreement to Authorize Electronic Access to PennDOT Systems” to the consultant for execution. This Agreement will contain the Business Partner Identification (BP-ID).

This information is maintained at <http://www.dot2.state.pa.us>. Any updates to registration information needs to be completed at this location.

1.2.2 – Municipality Registration Process –

PennDOT uses the Engineering & Construction Management System (ECMS) to do business with consultants.

Municipalities can connect to ECMS at <https://www.ecms.penndot.pa.gov/ECMS/> and select the “Register as a

Business Partner” link. Registration Instructions are provided on this web page. Municipalities will enter information as a municipal user. Municipalities must register as a Municipality or Municipal Authority.

After the municipality completes the Business Partner Registration Application, PennDOT will submit an "Agreement to Authorize Electronic Access to PennDOT Systems" to the municipality for execution.

This information is maintained at <http://www.dot2.state.pa.us>. Any updates to registration information needs to be completed at this location.

1.3 – Consultant Quality Plan

The consultant shall be responsible for providing quality work, services and products to PennDOT.

The Consultant Quality Plan shall provide the consultant's documented plan to adhere to practices standard to their profession.

As part of the ECMS, the consultant is required to submit a Quality Plan as part of its electronic Annual Qualification Package. Any electronic Annual Qualification Package that does not include a Quality Plan will be rejected. The Consultant Quality Plan will be considered confidential by PennDOT because of the operational content of the plan.

Resumes included in the Consultant Qualification Package should be limited to upper level personnel whose decisions determine the success or failure of the firm.

The Consultant Quality Plan should demonstrate the consultant's commitment to ensuring procedures, policies, standards, and specifications are followed to deliver quality work, services, and products to clients at a fair and reasonable cost and in accordance with all terms and conditions accepted by the consultant. This plan should be concise and applicable to all clients.

The Consultant Quality Plan should contain and address the following elements:

- A. Policy – The consultant's executive management shall define and document its policy for ensuring quality. The consultant shall indicate how the policy is conveyed to all its employees.
- B. Organization – The consultant shall include an organization description that identifies the organization position(s) responsible for ensuring quality throughout the consultant's organization.
- C. Responsibility and Authority – Identify individual(s) in the organization responsible for:
 - Overall quality
 - Specific project quality

- Ensuring proper corrective actions are taken as required
 - Disposition of nonconforming work, services and products
- D. Process Controls – Describe in general terms how the project development process will be controlled to achieve the objectives of the project. Identify controls used to ensure all work, services, and products meet project standards and requirements. Identify state-of-the-art equipment to be utilized. Project specific controls will be identified in the project specific quality control plan.
- E. Subconsultants – The consultant shall document procedures to provide subcontracts or purchased services that conform to specific requirements. Define the controls and procedures used to review and monitor the activities and submissions of subconsultants and subcontractors. The level and type of monitoring and control will be dependent upon the type of service and the nature of submissions. Include defined procedures for records and quality audits.
- F. Identifying Non-Conforming Work Services and Products – The consultant shall document procedures to determine conformity of work, services and products to specified requirements. These procedures shall indicate how to identify, document and revise or dispose of the non-conforming work. Procedures for notifying the client and other appropriate agencies or parties shall be included with assurance that nonconforming work, services and products will not be submitted to the client and the client will not be charged for nonconforming work, services and products. The procedures for correcting or changing procedures or activities to prevent future occurrences shall be included.
- G. Monitoring Schedules/Delivery Dates/Budgets – The consultant shall describe the procedures and company reports or information to be used by the Project Manager and management to properly monitor the project and track the status of the following:
- Schedules and deliverables including corrective action to be taken if the consultant falls behind schedule.
 - Budgets including corrective action to be taken if the project will not be completed within budget.
- H. Invoicing Procedures - The consultant shall include an outline of their firm's invoicing procedures.
- I. Agreement Administration – The consultant management staff shall monitor all terms and conditions of agreements between the consultant and clients. The consultant shall establish and define procedures to review and process the following:
- Technical and Price Proposals for Original Agreement.
 - Modification to the Technical and Price Proposal applicable to a request for a Supplemental Agreement.
 - Modification to the Price Proposal applicable to the transfer of funds.
 - Documentation for a time of completion extension.
 - Estimating the percent completion and establishing the applicable costs in the preparation of invoices.
- J. Procedures for the Following Project Specific Functions are to be Addressed
1. Input – The consultant shall define a framework for compiling, recording and maintaining existing information, data and materials pertinent to successful completion of the project. The consultant shall define and make available to appropriate staff relevant criteria, including codes and standards. The consultant shall establish documented procedures for addressing client comments.
 2. Output – The consultant shall define procedures and perform reviews to insure completed work, services and products are functional and conform to the standards and requirements of the

client and peers. These shall include a method for determining that the most recent revisions of the procedures, manuals, standards, etc. are utilized.

3. Changes – The consultant shall define procedures to identify, document, review and discuss, with the appropriate client representative, any deviation from the agreed-upon work, services and products, prior to making changes.
- K. Organizational and Technical Interface – During the course of the project, communication and interface is necessary with various organizations and technical units. The consultant shall define both its approach to these interfaces and its method for documenting and transmitting the results.
- L. Quality Control/Quality Assurance Procedures (QC/QA) – The consultant shall document its procedures and approaches for QC/QA including, but not limited to, the following items:
 - Cost allocation
 - Checking criteria
 - Checking calculations
 - Computer programs
 - Deliverables
 - Document Control Logs
 - Specifications
 - Cost Estimates
 - Changes
 - Project Schedule
 - PS&E package
 - Design services during construction
- M. Feedback – The consultant shall define procedures for obtaining performance feedback at key project milestones and incorporating this information into their procedures.
- N. Internal Quality Auditing – The consultant shall document procedures for internal quality audits to verify that the Master Quality Control/Quality Assurance Procedures are being followed and the planned results are realized. Consultant staff shall perform these audits.

The results of the audits shall be documented and brought to the attention of the responsible personnel in the area audited. Management personnel shall take appropriate timely action to correct deficiencies noted, follow-up and verify effectiveness of the corrective action taken and document these actions.

If the consultant has a Master or Corporate Quality Management Manual that has been accepted by another state department of transportation, the consultant may submit the Manual along with an outline that cross-references the items identified in this directive. If the consultant has ISO Certification for the areas covered by the Corporate Quality Management Plan, this can be submitted in lieu of the Consultant Quality Plan.

1.4– Certificate of Authority to Do Business

The consultant shall obtain a Certificate of Authority from the Pennsylvania Department of State (www.pa.gov/en/agencies/dos.html) authorizing the consultant to do business in Pennsylvania if the consultant is conducting business as:

- a) A corporation that is not incorporated under the laws of the Commonwealth of Pennsylvania.
- b) A business that is operating under a fictitious name.

1.5 – Engineering Involvement Restrictions

A consultant cannot be given the opportunity to provide work and services which may result in the consultant's reviewing or having contractual control over the review of its own work and services. A consultant, also, cannot be given the opportunity to shield and/or protect its work and services from evaluation and potential liabilities.

The **Engineering Involvement Restrictions Matrix** summarizes the guidelines to determine if a potential conflict of interest exists. The "Project Involvement" column of the Matrix indicates the activity a consultant is or was involved with and the "Restrictions" column lists activities that **cannot** be performed by that consultant.

Any questionable consultant involvements regarding the application of these guidelines must be presented to the CMD Chief on Appendix 1A Request for Consideration for Engineering Involvement Restrictions form for coordination with the Office of Chief Counsel, and the Federal Highway Administration (FHWA). Any exceptions to these guidelines must be approved prior to Shortlisting under standard selection procedures or Final Ranking under modified/enhanced modified selection procedures or submission of bid package or technical proposal for design-build projects.

In addition to the matrix, the following guidelines should be considered when determining if there is a potential conflict of interest:

1. Any consultant that provided or is providing any work and services to PennDOT for a design-build project will **not** be eligible to provide any work and services to the contractor design-build team for that project. Engineering Districts may use the Department Consultant that developed the conceptual design for Consultation During Construction, Department Review, or Construction Inspection.
2. Any consultant providing work or services for the contractor design-build team, such as Final Design or Peer Review, is not eligible for any involvement under a Department Agreement on that project.
3. Any consultant providing any work and services to PennDOT for a design project would not be eligible to provide any work and services as a prime consultant on a Consultant Management Project Manager (CMPM) agreement involving that project. A consultant would not be restricted from serving as a subconsultant on a CMPM agreement provided that its involvement on the CMPM agreement would have no affiliation respective to its design effort.
4. A consultant providing work or services to a developer, where the work or services directly or indirectly affect PennDOT's project (including the review of a Highway Occupancy Permit), will be restricted from any involvement under a Department Agreement on that project.
5. A consultant providing work and services to a local government agency as its Municipal Engineer will not be restricted from project involvement under a Department Agreement, provided that the Municipal Engineer's involvement with the Municipality does not require that it advise the Municipality in the Municipality's review of PennDOT's project.
6. A consultant under Agreement to a Municipality, or to a Municipal authority, to provide work or services for a Municipal project will not be restricted from project involvement under a Department Agreement, provided that the consultant's involvement with the Municipality does not require that it advise the Municipality in the Municipality's review of PennDOT's project and the projects are not related and no conflicts of interest exist between projects.
7. A consultant that is involved with a grant application or preparing a Request for Proposal (RFP) for a particular project is not eligible to perform preliminary engineering or final design on that project.
8. A consultant that is involved in design of a project is not eligible to perform construction survey for that project.

ENGINEERING INVOLVEMENT RESTRICTIONS MATRIX

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
Feasibility Studies, Traffic Studies, Mapping Services		- No restrictions. However, • Constructability Reviews should be performed by personnel not directly involved with the project design to assure an independent, objective review. • No recommendations, in accordance with Adverse Interest Act.
Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating a CEE		- Not eligible for Preliminary Engineering Design Management. - A consultant providing Preliminary Engineering services is eligible for either the Department Review OR the Construction Inspection, but not both. - Not eligible to perform any work or services for the contractor design-build team. • Exception – A subconsultant working on a Department Agreement containing multiple “projects,” which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a “project” in which the subconsultant did not participate in ANY work for the Department. See “Department Agreements Containing Multiple Projects for Subconsultant” Table Below.
Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating an EA/ EIS		- Same Restrictions as “Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating a CEE” and the following: - May be considered for all other work and services, but may not enter into a specific Agreement, or a Work Order for other work and services, prior to the date of a Finding of No Significant Impact (FONSI) or Record of Decision (ROD).
Conceptual Design / Bid Package Preparation for Design-Build Project		- Not eligible to perform any work or services for the contractor design-build team. • Exception – A subconsultant working on a Department Agreement containing multiple “projects,” which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
		“project” in which the subconsultant did not participate in ANY work for the Department. See “Department Agreements Containing Multiple Projects for Subconsultant” Table Below.
Final Design		- Not eligible for Construction Management Project Manager, Construction Inspection, Constructability Review, or the Design Management services of reviewing work, services or deliverables from consultant’s Final Design Agreement (Consultant may provide other Design Management services). • Exceptions to the <u>Department</u> Final Design Consultant: ○ Constructability Reviews are permitted if included in the Scope of Work of the Final Design Agreement. ○ Construction Inspection may be considered if criteria meet those specified in <u>Section 1.5.1</u>.
	Final Design	- Consultant for contractor design-build team providing Final Design services is not eligible to perform Quality Assurance Reviews for the contractor design-build team. - Contractor design-build team participants are restricted from any future involvement under a Department Consultant Agreement for that contract.
Preliminary Engineering-Design Management, Review Note: This includes consultants performing reviews for a District or Central Office Agreement, including an Open End Agreement.		- Not eligible for Preliminary Engineering Design or environmental work and services. - Not eligible to perform any work or services for the contractor design-build team. • Exception – A subconsultant working on a Department Agreement containing multiple “projects,” which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a “project” in which the subconsultant did not participate in ANY work for the Department. See “Department Agreements Containing Multiple Projects for Subconsultant” Table Below

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
Final Design Management, Review Note: This includes consultants performing reviews for a District or Central Office Agreement, including an Open End Agreement.		- Not eligible for Preliminary Engineering, Environmental Studies or Final Design. - Not eligible to participate as a consultant for the contractor design-build team.
	Quality Assurance Review	- Contractor design-build team participants are restricted from any involvement under a Department Agreement including Department Review, Construction Consultant Management Project Manager, and Construction Inspection services.
Department Review (Any design review completed as a representative of PennDOT for Design-Build Project, including Quality Assurance Review and Owner's Perspective)		- Not eligible for Construction Inspection or Construction Consultant Management Project Manager Services.
Consultant Management Project Manager (CMPM)		- Not eligible for Construction Inspection or Construction Consultant Management Project Manager Services. • Exception – A subconsultant would not be restricted from serving as a subconsultant provided that their involvement on the Construction Inspection or Construction Consultant Management agreement would have no affiliation respective to their CMPM effort.
Consultant Construction Management Support Services (CM) (Any construction activity completed as a representative of PennDOT other than Construction Inspection, or Services During Construction)		- Eligible for Construction Inspection, except no involvement in: • Development or procurement of Construction Inspection Agreements. • Approval of Payrolls of Consultant Construction Inspection. • Establishment or adjustment of Construction Inspection resources. - Not eligible for Constructability Reviews unless the work and services are included in the Scope of Work of the Construction Consultant Management Project Manager contract. - Not eligible to participate as a consultant for the contractor design-build team.

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
Services during Construction (Any design support services/reviews conducted during construction)		- Not eligible for Construction Inspection. - Not eligible for Construction Consultant Management Project Manager.
Construction Inspection		- Eligible for Construction Consultant Management Project Manager, except no involvement in: • Development or procurement of Construction Inspection Agreements. • Approval of payrolls of Consultant Construction Inspection. • Establishment or adjustment of Construction Inspection resources. - Not eligible for Constructability Reviews unless the work and services are included in the Scope of Work of the construction inspection contract. - Not eligible to participate as a consultant for the contractor design-build team.

DEPARTMENT AGREEMENT CONTAINING MULTIPLE PROJECTS (FOR SUBCONSULTANT) TABLE

Work Subconsultant Performed Only on Project A		Project A				Project B			
		Final Design	Quality Assurance Review	Dept. Review	CM/CI	Final Design	Quality Assurance Review	Dept. Review	CM/CI
Project A	<i>Preliminary Engineering Activities (Does not include Bid Package Prep)</i>	N	N	Y *	Y *	Y'	Y'	Y'	Y'
	<i>Conceptual Design/Bid Package Prep</i>	N	N	Y *	Y *	Y'	Y'	Y'	Y'
	Final Design		N	N	N			N	N
	Quality Assurance Review			N	N			N	N
	Dept. Review				N	N	N	Y**	Y**

Note: Project A and Project B represent multiple projects under one Engineering Agreement that were let under **separate** construction contracts.

N - Subconsultant is not eligible to perform service.

Y*- A subconsultant, working on the Preliminary Design or Conceptual Design/Bid Package Prep for Project A, can work on **EITHER** the Department Review for Project A **OR** the Construction Inspection for Project A, but not both.

Y**- A subconsultant firm, that worked on the Department Review for Project A, can work on **EITHER** the Department Review for Project B **OR** the Construction Inspection for Project B, but not both

Y'- A subconsultant firm, that worked on the Preliminary Design or the Conceptual Design/Bid Package Prep for Project A, can only work **on one** of the following: Final Design, Quality Assurance Review, Department Review, or Construction Management/Construction Inspection (CM/CI) for Project B.

 Shading represents work to be performed by the Contractor Design-Build team

Additional information concerning design-build projects or procedures can be found in PennDOT Publication 448, Innovative Bidding Toolkit.

1.5.1 - Construction Inspection

For Program Management Committee (PMC) approved projects at \$1.5 million or less in construction costs, including CENG, the Final Design Consultant, **on both PennDOT and Municipal (including privately sponsored) projects**, may be considered for construction inspection services in accordance with the following:

1. For all projects engaging the Final Design Consultant for construction inspection, the District must submit to CMD a Quality Assurance Plan, which ensures appropriate PennDOT oversight and minimizes the risk of conflicts of interest. See Appendix 1B Construction Inspection Quality Assurance Plan.
2. The original selection criteria and scope of work must include both Final Design and Construction Inspection Services, and the Consultant Qualifications Package must demonstrate the appropriate qualifications for both services if both services are to be covered under one contract. However, if

two separate contracts are going to be used for the same project, separate solicitation for the design and construction inspection phases can be made and the same consultant can compete for both services under separate contracts.

3. The construction inspection phase of work will not be guaranteed. It will be necessary to negotiate final inspection services at the completion of Final Design, if both services are included under one agreement.

The CMD will be monitoring the PMC approved construction costs versus Construction 4232 costs at final Plans, Specifications, and Estimates (PS&E) through Quality Assurance (QA) reviews to ensure the integrity of this flexible process.

If construction costs are found to be over \$1.5 million at PS&E, a separate advertisement may be required for Construction Inspection.

1.6 – Conflict of Interest

Consultants shall adhere to 2 CFR 200.112, 23 CFR 1.33 and 23 CFR 172 regarding conflicts of interests. These and other conditions that consultants are subject to can be found in the General Requirements attached to the agreement advertisement.

1.7– Adverse Interest Act

A Pennsylvania law, known as the Adverse Interest Act, enacted in 1957, indicates the following:

“No State advisor or State consultant having recommended to the State agency which he serves, either the making of a contract or a course of action of which the making of a contract is an express or implied part, shall, at any time thereafter, have an adverse interest in such contract”.

Example:

A consultant who recommended bridge replacement in a recommendations section of an in-depth bridge inspection report under one Consultant Agreement would not be eligible to submit a Statement of Interest (SOI) on the Consultant Agreement that included the design for the bridge replacement.

or

A consultant preparing grant or funding applications would not be eligible to participate on a project resulting from a successful grant or funding award.

Any questionable consultant involvements that involve the application of this Act must be presented to the CMD in writing for coordination with the Office of Chief Counsel.

Chapter 2 – Selection Process Procedures

2.1 – Introduction

The Selection Process discussed in this chapter begins with identifying the need for a consultant and continues to the Notice to Proceed for the Agreement.

PennDOT uses the following methods of selecting a Consultant to provide services:

- 1) Normal Selection Procedures
- 2) Modified Selection Procedures
- 3) Enhanced Modified Selection Procedures – Discussed in Chapter 3
- 4) Sole Source Selection Procedures – Discussed in Chapter 3
- 5) Emergency Selection Procedures – Discussed in Chapter 3

Normal Selection Procedures require the interested consultants to submit a SOI from which the IO short lists three consultants. These short-listed consultants submit a Technical Proposal from which the IO ranks these short listed consultants.

Modified Selection Procedures require the interested consultants to submit a SOI that serves as an abbreviated Technical Proposal for the purpose of selection. The IO will rank the top three consultants from this SOI.

The IO must ensure that complete, definitive information can be obtained solely from the review of SOIs and Consultant Qualification Packages prior to designating the Modified Selection Procedure. If the nature of the project is such that additional information is needed to justify the final ranking, normal selection procedures should be used to obtain additional information from a Technical Proposal or Oral Presentation.

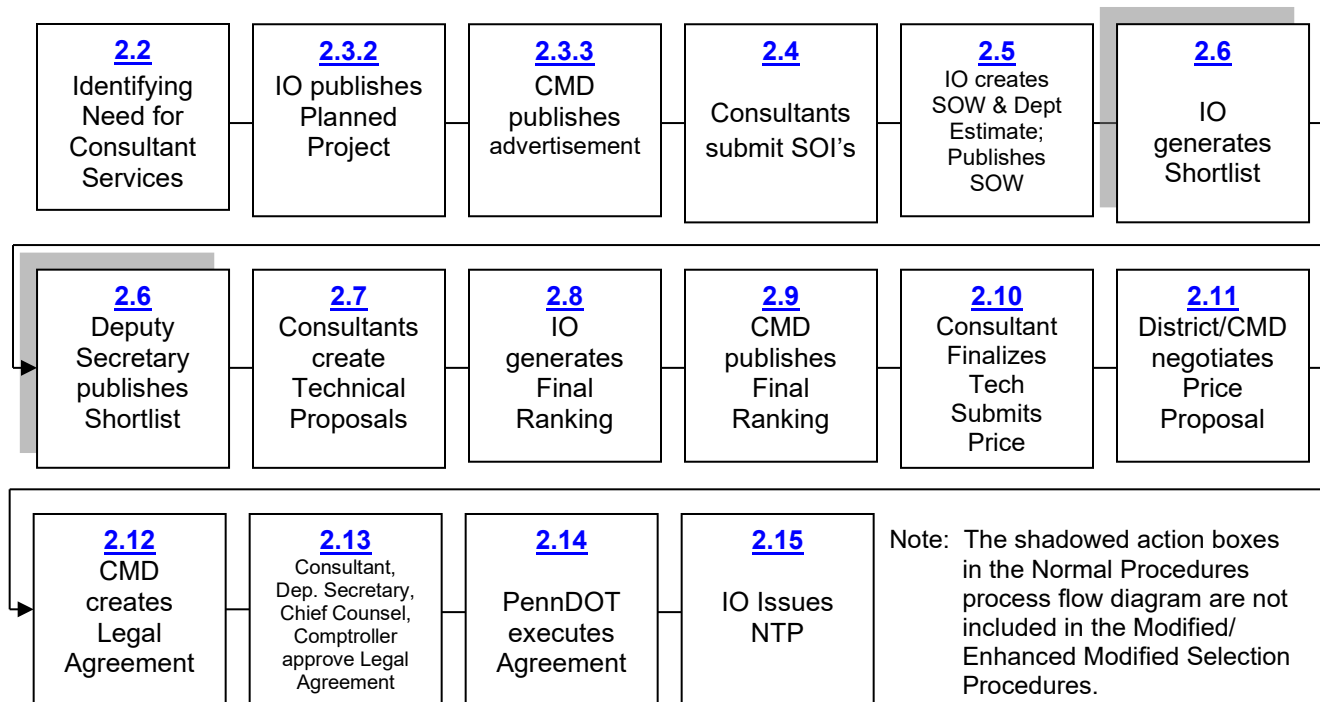
2.1.1 – Normal Selection Procedures

Normally this process takes four to six months.

There is a maximum timeframe of 12 months allowed from the date of the advertisement to the date of Agreement Execution. For Agreements advertised before January 31, 2010, the maximum allowed timeframe will be 18 months. ***[Not meeting these time limitations may require that the project be readvertised.]***

The CMD Chief has the authority to waive these timeframes in unique circumstances, upon receipt of written request and justification.

NORMAL SELECTION PROCEDURES OVERVIEW



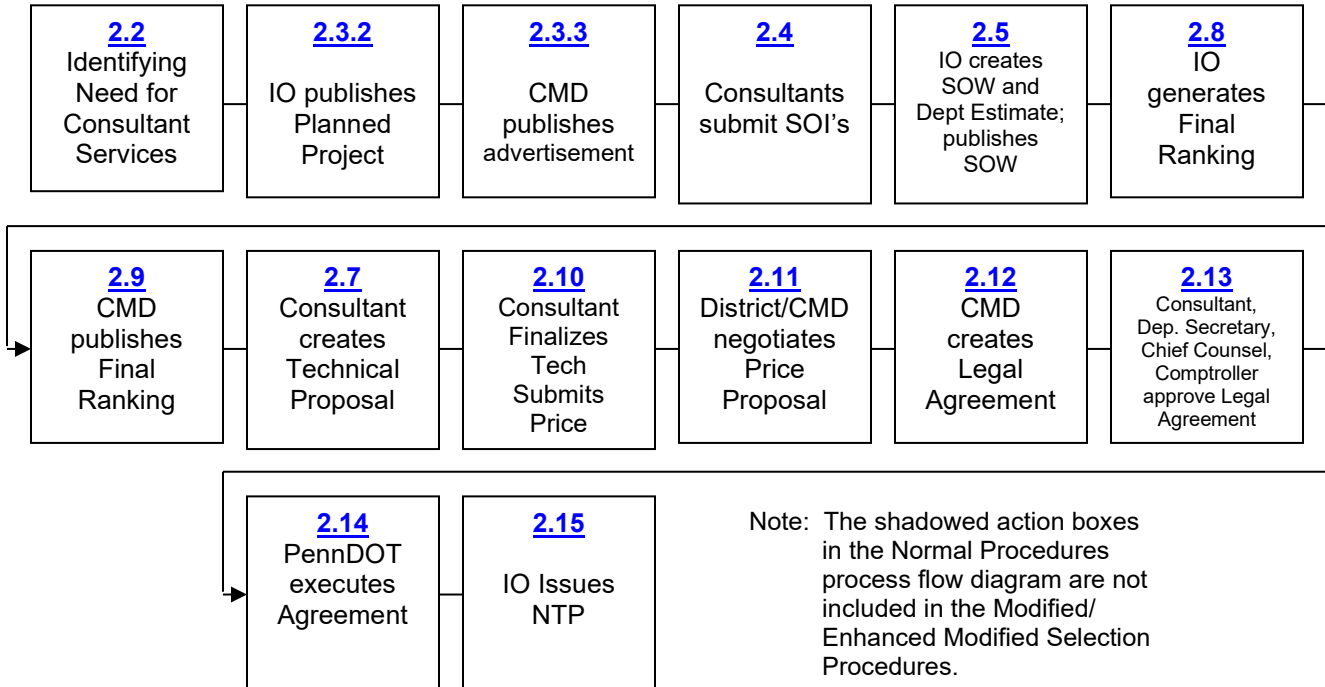
2.1.2 – Modified Selection Procedures

Normally this process takes three to five months.

There is a maximum timeframe of 8 months allowed from the date of the advertisement to the date of Agreement Execution. For Agreements advertised before January 31, 2010, the maximum allowed timeframe will be 12 months. **[Not meeting these time limitations may require that the project be readvertised.]**

The CMD Chief has the authority to waive these timeframes in unique circumstances, upon receipt of written request and justification.

MODIFIED/ENHANCED MODIFIED SELECTION PROCEDURES OVERVIEW



2.2 – Identifying Need for Consultant Services

The Initiating Organization (IO) is required to justify the need for a consultant on a project-by-project basis to ensure the full utilization of PennDOT staff and expertise prior to requesting consultant work and services. The IO shall comply with all *Bargaining Unit Agreements* when determining the need for consultant work and services.

If the IO is an Engineering District, the District Portfolio Manager is responsible for managing the Engineering District's resources.

Prior to submitting a planned project, the IO will evaluate the overall workload of the various in-house unit technical staffs to determine if the capacity to perform any additional projects exists. The IO should:

- Consider this evaluation and program priorities as they relate to the project,
- Estimate the timetable of when the project would be completed if performed by IO personnel,
- Document the conclusion that the work cannot be done in-house due to a lack of expertise or available time,
- Ensure that the IO has committed to programming adequate funds to complete the Consultant Agreement,
- Ensure that knowledgeable PennDOT personnel are available to monitor and manage the consultant to ensure compliance with the terms and conditions of the Consultant Agreement.

Documentation needs to be presented as shown on Appendix 2A Justification to Use a Consultant which positively concludes that the use of a Consulting firm is necessary. The IO should maintain this documentation as part of the Consultant Agreement file.

Staff Augmentation

Approval for obtaining consultant staff support must be obtained from PennDOT's Bureau of Human Resources (BHR) and the Office of Administration (OA) prior to advertising for new agreements and for work orders for existing open end agreements. The IO should request these services through BHR by completing a memo to BHR, see Appendix 2B Bureau of Human Resources Sample Memo. Upon approval of this memo, BHR will forward a letter to OA, see Appendix 2C Office of Administration Sample Memo, for approval.

2.2.1 – Right-of-Way Acquisition Services

Right-of-Way Acquisition Services are procured through the consultant engineering selection process as provided in Section 905 of the Commonwealth Procurement Code. For consultants to be eligible for assignments under Work Breakdown Structure (WBS) Code 2.10.7 (Right-of-Way Acquisition Services) they must be preapproved by PennDOT and they must be ECMS Registered Business Partners.

The consultant engineering selection process can be used to hire a Right-of-Way Acquisition Consultant as a prime consultant or as a subconsultant to a design consultant. In either case, the procedures detailed in Publication 93 must be followed. When the Right-of-Way Acquisition Services are to be performed by a subconsultant, they can be included as part of a new agreement in ECMS.

In addition to providing Right-of-Way Acquisition Services in project-specific agreements, open end agreements can be created specifically for Right-of-Way Acquisition Services. Right-of-Way Acquisition Services can also be included in other open end agreements such as those for Final Design.

When using the consultant engineering selection process, the WBS Code of 2.10.7 should be selected for Right-of-Way Acquisition Services. The services under this code include the following:

- Relocation Assistance Plan/Problem Identification,
- Appraisal Planning/Services,
- Negotiation,
- Title and Settlement Services,
- Relocation Assistance and Payments,
- Property Management, and
- Other Services.

Although the language in the statement of work cannot be changed, it can be tailored to individual projects by entering comments under "Detail" in ECMS.

The District Right-of-Way Administrator must be involved with development of the agreement to determine what activities are required and to offer project-specific details. While many details can be modified or added, certain details such as those involving the procurement or review of appraisals cannot be modified.

2.2.2 – Photogrammetry Services

For those advertisements that contain photogrammetric products or services, verify that a workload analysis was completed by the Bureau of Design and Delivery (BODD), Photogrammetry and Surveys Section (PSS). Only PSS has the expertise to evaluate work-hour and completion date estimates submitted by the consultants to determine whether these estimates are acceptable and meet PennDOT's standards for the above referenced work.

Photogrammetric services and products include but are not limited to fixed wing and helicopter film or digital aerial imagery, all photo lab products, terrestrial LiDAR, mobile LiDAR, conventional field surveys, GPS/geodetic surveys, digital mapping, and digital orthophotography.

The CMD will not process agreements containing photogrammetric services without the written consent of PSS.

2.2.3 – Consultant Management Project Manager (CMPM) and Review Assistance Information

Due to the increasing workload and staff availability issues, it is essential for consultants to perform duties that have been traditionally done by PennDOT staff. Consultants will be hired to handle the project management and submission review duties in an effort to help meet both the Commonwealth's and PennDOT's letting goals.

Certain PennDOT oversight requirements cannot be delegated and/or overlooked. PennDOT Portfolio Managers will still retain full oversight responsibility for all work assigned and completed by the consultant project manager and review teams.

Approval Process

On Federal Aid projects, Federal Highway Administration (FHWA) approval will be needed prior to advertisement if the CMPM agreement includes Project Management Support Service tasks, such as development of Scope of Work (SOW) and Department Estimate, supervision of other consultants, etc. District must submit an approval request letter to CMD. CMD will then forward the request to the FHWA.

Confidential Information Access

The Consultant Management Project Manager (CMPM) will have access to view information classified as "Confidential/Department Only". A CMPM must sign a Confidentiality Statement. See Appendix 5A Confidentiality Certification.

Violation of this statement may result in the entire agreement being canceled immediately with the possibility of further disciplinary action being taken by PennDOT. See [Section 5.2](#) for additional information.

Project Assignments

All agreement and/or project assignments for the CMPM will remain the responsibility of the District Portfolio Manager or ADE. The District Portfolio Manager will evaluate the work load requirements and determine what consultant project will be assigned to the CMPM.

The District retains oversight on all projects assigned and final approval authority on all key submissions as per the FHWA Oversight Agreement.

Location of Work

It is at the discretion of the District Portfolio Manager as to the location of the work site of the CMPM. If the District Portfolio Manager desires that the work location be solely at the District Office, this must be conveyed in the Advertisement.

System Access Requirements

The CMPM will need special access for the following Commonwealth and PennDOT systems:

- LAN/CWOPA Accounts: A CMPM will be issued a Consultant Commonwealth User ID and email account on the Commonwealth's LAN/CWOPA. This account will be necessary when performing roles/duties as a CMPM. All project meetings must be scheduled using the Commonwealth's Outlook Calendar.
- Asta: A CMPM will be assigned a District Asta user-id and password.
- ECMS: A CMPM's ECMS user-id and password will need to be upgraded to enable him/her to perform the duties necessary as required in the agreement.

- WelcomHome: A CMPM will be assigned a PennDOT consultant user-id and password. This user-id will need to be established/upgraded to enable him/her to perform the duties necessary as required in the agreement.
- CE/Expert: A CMPM will be assigned a PennDOT consultant user-id and password. This user-id will need to be established/upgraded to enable the performance of the duties necessary as required in the agreement.
- EDMS: A CMPM will be assigned a PennDOT consultant user-id and password. This user-id will need to be established/upgraded to enable the performance of the duties necessary as required in the agreement.
- MPMS: A CMPM will be assigned a PennDOT consultant user-id and password with Read Only access.
- BMS2: A CMPM may be assigned a PennDOT consultant user-id and password, or the use of the established consultant firm ECMS user-id and password is acceptable. This user-id will need to be established/upgraded to enable the performance of the duties necessary as required in the agreement.
- Other: The District may need to grant access to District specific programs, tracking data bases, etc. that are necessary to perform the project management duties.

Before the CMPM can obtain access to any of these systems, approval must be submitted to and approved by the District Portfolio Manager. See Appendix 2D Commonwealth Computer System Accounts User Agreement.

Once the agreement has ended, all system accesses will be terminated.

Consultant Management Project Manager (CMPM) Capabilities and Limitations

A CMPM MAY perform the following:

- Meetings: A CMPM may attend/conduct meetings on behalf of PennDOT. The CMPM must state at the beginning of each meeting that they are acting as representatives of PennDOT in their role of Project Manager. The purpose of the CMPM at these meetings is to transfer information. All decisions must have Department approval.

The CMPM must have obtained prior approval from a PennDOT District Representative to attend/conduct all meetings. To obtain this approval, the CMPM should forward a memo to the District Portfolio Manager stating the following:

- The purpose of the meeting
- Who is attending the meeting
- Expected outcome
- Rough estimate of work-hours and direct costs associated with the meeting

Upon completion of the meeting the CMPM should transmit a follow up memo to the District Portfolio Manager addressing each of the above criteria.

The following is a representative sample of the meetings that can be attended by a CMPM.

- Project status meetings with Design Consultant
- Project meetings with various review agencies
- Public meetings (PennDOT District Senior Manager must also be in attendance)
- Scoping Field Views
- Design Field Views
- Plans check
- Site visits
- Internal District and/or PennDOT project delivery meetings
- Other meetings as assigned by District Portfolio Manager or ADE-Design
- Review and preliminarily approve invoices from project design consultants. All invoices must have final approval by an actual PennDOT employee (i.e. the District Project Manager of the project agreement being invoiced).
- Create Scoping Field View Forms, Scopes of Work, Department work-hour estimates, advertisements, work orders, supplements and agreement close-outs.

- Create and manipulate Asta schedules on the “PennDOT Asta” server for projects assigned.
- Interact directly with other district and/or Central Office review units.

A CPM may NOT perform the following:

- *Participate in actual consultant selection meetings.*
- *Be involved in consultant evaluation.*
- *Issue final approvals on key project delivery submissions.*
- *View or revise non-assigned projects.*
- *Manage or review project submissions for projects in which the consultant is involved in the actual design activities.*
- *Direct or manage a state employee. This includes the assignment of task duties, evaluations, approve time sheets or leave requests.*

Administrative issues for Consultant Management Project Manager (CPM) & Review Agreements

Consultant team will invoice the District on a monthly basis. In addition to the invoice, the consultant will submit documentation listing all projects, the breakdown of charged work-hours per month, and the work-hours used to date on each project. If the IO Project Manager wishes to update the invoice for proper project allocation, they must do so before the invoice is approved.

Consultant team will establish a tracking system and track all submission timelines. PennDOT must approve the format of the tracking system.

Districts are to assess submissions every six months. This assessment should include the expenditure for a CPM and the number of projects moved to letting. This assessment will be the basis for the consultant's evaluation and the justification for continuation of the use of a CPM.

2.2.4 – Construction Management Support Service (CM)

An engineering Consultant Agreement that provides for the following work and services is supportive and not managerial in nature and shall be considered Construction Management Support Services:

- Provide constructability reviews
- Analyze contractor's Critical Path Method schedules and monitor progress during construction
- Provide support work and services for correspondence
- Attend pre-construction meetings
- Review and evaluate value engineering efforts
- Track all submissions including shop drawing reviews
- Review design or construction change requests
- Coordinate and participate in community relations tasks
- Assist in claims situations
- Provide and distribute monthly summary reports

Observe the following guidance for providing Construction Management Support Services:

- For a large, multi-contract construction project, a separate Consultant Agreement to provide construction management support work and services may be warranted.
- For most projects requiring construction management support, this work and services should be combined with the construction inspection Consultant Agreements or performed by PennDOT staff. For those agreements that contain both construction management and construction inspection, separate parts **must** be established in the Agreement.
- Constructability reviews should be initiated during the design phase and, for the most part, should be provided for through the design Consultant Agreement, by PennDOT staff, or through one of the Statewide Open End Agreements that have been secured for that service.

Any Construction Management (CM), Construction Inspection (CI), or CM/CI Agreement cannot be more than \$ 5 Million without prior approval from the BODD Director.

Approval Process

On Federal Aid projects, Federal Highway Administration (FHWA) approval will be needed prior to advertisement if the agreement includes Construction Management Support Service tasks, such as development of Scope of Work (SOW) and Department Estimate, supervision of other consultants, etc. District must submit an approval request letter to CMD. CMD will then forward the request to the FHWA.

2.2.5 – Consultant Inspection

Any Construction Management (CM), Construction Inspection (CI), or CM/CI Agreement cannot be more than \$ 5 Million without prior approval from the BODD Director.

See [Section 4.3](#) for additional information concerning Construction Inspection Agreements.

2.2.6 – Highway Construction Design Professional Services Matrix

Highway Construction Design Professional Services Matrix

Service	Authorized under Chapter 9 of the Procurement Code *
Design of an alteration or repair of real property (ex. roads/bridges)	X
Architecture and Architecture related services	X
Comprehensive Planning	X
Construction Management	X
Construction Phase Services (ex. Shop Drawing Review, Design Build Review)	X
Design (Conceptual, Preliminary and Final)	X
Development of plans that are related to real property	X
Drawing Reviews	X
Engineering	X
Engineering: Architectural	X
Evaluations that are architectural or engineering in nature	X
Geology including Soils Engineering	X
Investigations that are architectural or engineering in nature	X
Mapping Services	X
Professional Services of an Architectural or Engineering Nature	X
Planning	X
Preparing Plans and Specifications	X
Preparation of Operating/Maintenance Manuals	X
Program Management	X
Research (Architectural or Engineering Nature)	X
Studies: Feasibility and Planning	X
Surveying	X
Testing Services	X
Value Engineering	X
Compliance Reviews (Mandated by Feds or State)	X
Environmental Services	X
Performance Reviews (Checking Statutory/regulatory compliance)	X
Policy Development (Engineering Related)	X
Right of Way Acquisition	X
Safety Evaluations or Inspections of an Engineering Nature	X
Training Development Engineering Related Material	X
Training Development/Delivery Engineering Related Material	X

* The services listed in the table above will be procured through ECMS.

The following services require coordination with Office Services and Office of Chief Counsel prior to procurement: Landscape Architecture, Real Estate Appraisals, Delivery of Engineering Related Services Training, Training Development/Delivery for Non-Engineering Material, Conference Planning, Legal Services, Development of Engineering Software, Research for new materials and new Programs.

For any service not listed, contact Office Services.

2.3– Creation and Announcement of Anticipated Project

2.3.1 – ECMS Setup

District Portfolio Manager must create a new agreement and complete the Agreement Detail Screen. The CMD Chief or designee will create a new agreement and complete the Agreement Detail Screen for Central Office IOs.

The information entered in the Agreement Detail Screen will determine which template and default data will be made available when initiating the Advertisement.

- *Initiating Organization* – District or Bureau
- *Agreement Name* – Local Description of Project
- *Agreement Type* – Open End; Project Specific – See [Section 3.2](#)
- *Open End Type* – Non Project Specific; Project Specific; Task Specific - See [Section 3.2.2](#)
- *Selection Process* – Modified; Normal; Sole Source - See [Section 3.3](#)
- *Enhanced Modified* – Yes; No - See [Section 2.8.5](#)
- Timeframe – Emergency; Standard
- Legal Description – Information is eventually used by ECMS to populate the last portion of the descriptive paragraph under Section A.1 in the Legal Agreement while the Negotiation Engineer is creating it.
- *Services Requested* –
 - Construction Inspection – use with Construction Inspection Agreements
 - Design and Misc. Services – use with all Agreements other than Construction Inspection
 - Construction Management – use for Construction Management Agreements

Note: If the agreement includes Construction Management with Construction Inspection, the Services Requested field should be Construction Inspection. If the agreement includes Construction Management without Construction Inspection, the Services Requested field should be Construction Management.

- DBE Goal – In accordance with [Section 2.3.3](#)
- Method of Payment – Cost per Unit of Work; Cost Plus Fixed Fee; Lump Sum; Specific Rate of Compensation; Specific Rate of Compensation for Construction Inspection – See [Section 3.5](#)
- MPMS Numbers – Use appropriate MPMS numbers, separated by commas.

Note: When entering the information above, it should be noted that italicized fields above are locked for editing following the creation of the Planned Project. These fields cannot be revised. If incorrect information was entered in any of these fields, a new agreement will need to be created.

ECMS then requires that an Agreement Team be established consisting of:

- Owner – the individual(s) tasked with administering the Agreement,
- PennDOT Project Managers – a listing of anticipated Project Managers for each Part or Work Order under the Agreement
- Selection Committee – those tasked with reviewing the Statements of Interest. These individuals are included because they will require view authority for the Advertisement and SOI in order to participate in the selection process. See [Section 2.8.1](#) for additional information concerning the IO Selection Committee.
- Selected Prime – For agreements with a selection process of Normal or Modified, ECMS will populate the selected consultant fields at the time of the publication of the Final Ranking results. If the selection process is "Sole Source," the Portfolio Manager should input the "Selected Consultants" once the Sole Source request has been approved.
- Prime Project Managers – After the selection process is complete, the prime consultant Project Manager must be completed in order to allow individuals who are reviewing the Agreement documents to make contact with the Consultant Project Manager as necessary.

Once the Final Ranking/Shortlisting is published security access to create the Technical Proposal(s) will be granted to the Principal(s) of the consultant(s) named as prime consultant(s) on either the Shortlisting or the Agreement Team tab, as applicable. Security clearance to create the Price Proposal will appear for the prime consultant once the first portion of the Technical Proposal has been saved, and for any subconsultants once the due date for the Technical Proposal has passed.

2.3.2 – Planned Project

The published Planned Project serves as the initial notification of an upcoming Consultant Agreement advertisement. The Description of Work within the Planned Project should allow a consultant to decide whether or not they should begin the preliminary work necessary to respond to the upcoming advertisement. For additional clarification, the IO may include a project map as a .pdf file and attach the file in ECMS to the Planned Project.

If the Planned Project only involves a broad-based study, e.g. traffic study, etc., the Agreement Amount should reflect an anticipated wide range. It is also a good idea to create and link a map of the subject project, or in the case of bridge inspection to link spreadsheets with bridge information for the benefit of the consultant community. The quality of SOI will be directly impacted by the information contained in the Planned Project.

2.3.3 – Advertisement

General Information

The Planned Project must have been published for at least 14 calendar days prior to publishing the Advertisement to allow interested consultants time to develop their team and prepare for their response, SOI, to the Advertisement. For additional clarification, the IO may want to create a project map or other pertinent documentation as a .pdf file and attach the file in ECMS to the Advertisement.

The IO must identify the anticipated date when the consultant resources are needed on all project specific agreements. The IO must identify the anticipated selection and Notice to Proceed (NTP) date for Open End agreements. Add the project description and service requested within the advertisement. A statement must be included in the advertisement stating that all questions and answers are required to go through ECMS's "Questions and Responses" forum.

Typically advertisements will be published on a Monday, with SOI due on Thursday at least ten days later. Holidays and unforeseen circumstances may cause fluctuations in this schedule.

Consultant Work to be Performed at a PennDOT Office

For an Open End Design or Miscellaneous Services Agreement that may require the consultant to work at a PennDOT Office, the following statement must be included in the advertisement.

"Some Work Orders, under this Open End Agreement, may require the consultant to perform work at PennDOT (District ____; Central) Office."

Advertised DBE Participation

The DBE goal will be a percent of the Consultant Agreement total cost. All DBE requirements will be finalized by the CMD.

PennDOT will use its federally approved DBE goal-setting methodology and the statistical and economic marketplace data for individual market categories including consultant services to set the PennDOT overall DBE goal. DBE goals are set based upon the best available marketplace data relative to ready, willing, and able DBE firms to perform under federally assisted consulting and engineering agreements.

CMD reviews DBE goals on a monthly basis, and goals for future agreements may be adjusted accordingly.

In the event that the DBE goal methodology and data fail to support a DBE goal for a particular agreement, a DBE goal will not be advertised. However, consultants will be encouraged to use DBEs and small businesses to assist in the performance of the agreement.

If a goal for DBE participation is established for an advertised Consultant Agreement, all consultants expressing interest in the Agreement must commit to ensuring that DBE consultants, certified at the time of submission by the Pennsylvania United Certification Program (PA UCP), have the opportunity to participate in subcontracting opportunities. Responding consultants shall make every effort to meet DBE goals using the PA UCP Certified DBEs.

If an advertisement is for an agreement, which is unusual in nature, and consultants feel that due to the unique situation, the advertised DBE goal is unattainable, consultants should use the Advertisement Questions and Responses portion of ECMS to express their concerns.

Multiple Agreement Selections from One Advertisement

When projects are similar in scope (betterments, general maintenance, and bridges), Modified Selection Procedures and Open End Agreements have the capacity to select multiple consultants from one advertisement.

The information on the following fields must be the same in all the projects that are to be linked in one advertisement:

- *Initiating Organization*
- *Agreement Type*
- *Open End Type*
- *Selection Process*
- *Enhanced Modified*
- *Services Requested*
- *Agreement Status*
 - Must be in Setup if linking at the Planned Project stage;
 - Must be in Planned Project Published if linking at the Advertisement stage.

The determination to use this procedure is the responsibility of the ADE for Design, Portfolio Manager, Bureau Director, or Division or Section Chief.

The IO must determine at the Planned Project phase to “batch” the projects into groups (example: 3 groups of 4 projects, 4 groups of 3 projects, etc.) or to establish a separate agreement for each project. Because of the potential for large numbers of projects in one advertisement, IOs should use discretion in their expectations for the consultants to visit all the project sites listed in this type of advertisement.

Districts are encouraged to group multiple minor projects to reduce the number of advertisements, selections, and also the number of SOIs needed to be prepared by consultants.

Selections for Multiple Agreements must occur at the same time for all agreements on the advertisement. Final Ranking procedures should follow the procedures discussed in [Section 2.8.6](#).

A consultant that desires to be selected for a particular agreement(s) in the advertisement, should indicate such on their submitted SOI.

Multiple Agreement Selections from One Advertisement for Non-Project Specific Open End (NPS-OE) Agreements

This applies to any grouped NPS-OE agreements advertised after June 22, 2016.

When multiple NPS-OE agreements are selected through a single advertisement for services, each specific work order will be awarded to one of the selected qualified consultants through an additional qualification-based selection (QBS) procedure. The IO will request each Prime Consultant that was selected in the grouped advertisement to submit a letter documenting their qualification based on the district scope of work for the work order and the selection criteria provided. See Selection Criteria examples further in this section of Pub 93. The IO must evaluate each submission and award the work order to the most qualified firm. The IO must document the justification for selecting the consultant for each work order and retain the documentation as required.

The additional QBS is not required if a District grouped advertisement for NPS-OE agreements designates a specific county(ies) for each agreement or if a CO grouped advertisement designates a specific district(s). In these cases the work will be assigned accordingly. For this situation, if the work load in a county or district designated for one agreement is at maximum capacity for the designated consultant to handle additional projects, a QBS must be completed among the remaining consultants in the multiple NPS-OE advertisement for the additional work.

If the IO does not advertise for multiple open ends in one advertisement, an additional QBS for each work order will not be required.

Oral Presentations

For Consultant Agreements for unusual or complex projects, the IO may require oral presentations of the shortlisted consultants to further evaluate a consultant's qualifications. Advertisements for such projects should indicate that PennDOT anticipates oral presentations.

Oral presentations are highly recommended for CPM Agreements.

Selection Criteria

When generating the Consultant Agreement's selection criteria and corresponding weights, the criteria listed under Transportation Design Project Advertisements and Transportation Construction Inspection Advertisements should be represented. Evaluation criteria should be structured to fully express the requirement without exaggerating the need. Overstating the qualifications and capabilities required to perform a task can be problematic. The reasons for Shortlisting or Final Ranking will be driven by the selection criteria. IO Project Managers should seek concurrence of Agreement Team members prior to submitting advertisements for publishing.

Advertisements that request information concerning a firm's costs, cost-effectiveness, or cost-efficiency as part of the selection criteria are prohibited. Examples of these costs include: a firm's overhead rate, minimizing or not charging for direct or indirect costs, an indication of money returned to PennDOT for work not performed, or employee hourly rates. References to cost-effective solutions, reduced construction project costs, or minimizing future maintenance costs are permitted.

If a local presence will add value to the quality and efficiency of a project, then a local presence criteria may be used. This criteria shall not be based on political or jurisdictional boundaries or proximity to a PennDOT office. This criteria must not exceed 10 percent of the total evaluation criteria.

Field Views

For minor projects, or in other cases when conditions warrant, it may be desirable to provide photographs of the project site to eliminate the need for interested consultants to perform a field view in advance of SOI preparation. If so, the photographs must be attached to, or linked to, the advertisement along with the statement that field views are discouraged. The advertisement should indicate that firms are neither expected nor encouraged to visit this project(s) prior to submitting their Statements of Interest (SOIs). Firms that indicate in their SOI that a field view was performed will not receive any benefit during the selection process.

Transportation Design Project Advertisements

All advertisements for design projects published by PennDOT should include the following selection criteria in addition to any other criteria deemed appropriate by the IO. These criteria help ensure that the best qualified consulting team is selected.

The order of importance is established by the IO. The team being referenced is the proposed consultant team, comprising both prime and subconsultants:

- 1) What will the team do to ensure that a proper application of principles will result in more cost-effective construction solutions that apply design flexibility with consideration of the surrounding land use and all transportation modes?
- 2) Use and experience of subconsultants, how subconsultants are planned to be incorporated into the projects, and how they will be managed to ensure that their work and deliverables are timely and meet high quality standards.
- 3) How will the team manage the design of the project(s) and minimize future maintenance of the project(s)?
- 4) How will the team pursue project delivery in relation to developing and/or meeting design and construction project schedules?
- 5) How did the team perform on past projects?

The first criterion deals with the methodology proposed by the consultant to assure PennDOT that the design of a cost-effective, quality construction plan will be delivered. The second criterion addresses how subconsultants will be managed and incorporated into the project, and that deliverables meet time and quality expectations. Responses to the third criterion will need to include the specifics, rather than generalities, and commitments to minimize Scope of Work or construction cost creep. The fourth criterion addresses the consultant's commitment to adherence to the design and construction schedules, which minimizes impacts to the traveling public. The fifth criterion takes into account the actions and evaluation of the consultant for past projects.

Transportation Construction Inspection Advertisements

All advertisements for transportation Construction Inspection projects published by PennDOT will need to include the following selection criteria in addition to any other criteria deemed appropriate by the IO. These criteria should ensure that the best qualified consulting team is selected:

- 1) Review of inspector's resumes, including the length of employment with the submitting firm, with emphasis on construction inspection capabilities and specific project work assignments and timeframes.
- 2) Work experience and supervisory experience on PennDOT projects indicating an understanding of PennDOT's requirements, policies, and specifications.
- 3) Number of inspectors in each classification with NICET certification in Highway Construction (by level), NECEPT Bituminous Field Technician certification, PennDOT Certified Concrete Field Testing Technician and ECMS training or experience.
- 4) Firm's commitment to a quality control and quality assurance process as demonstrated in the firm's Statement of Interest and the firm's QA/QC Plan on file in ECMS with PennDOT.

- 5) How will Management and Inspection staff work with PennDOT to assure the contractor meets the project milestones?
- 6) How did the team perform on past projects?
- 7) How will the Inspection staff work with PennDOT to assure contractor compliance with environmental commitments, mitigation and permit conditions?

The IO should carefully evaluate the number of employees needed for each classification when indicating such on the advertisement.

On projects when possible, the IO should consider adding Technical Assistant (TA) Classification employees in order to add staff and give opportunities to train and advance inspectors. A general guide in incorporating TA Classification is one TA for every five to ten inspectors.

Under the terms and conditions of the agreement, the consultant is held accountable to provide the quality level employee indicated in the SOI.

2.3.4 – Agreement Clarification Forums

ECMS includes “Question and Responses” forums which provide for discussions with the consultant community concerning the project. A “Question and Responses” forum exists after the advertisement is published and, again, after the SOW is published. Consultants desiring additional information to clarify or discuss project issues prior to submitting a SOI, for Normal and Modified selections, or prior to submitting a Technical Proposal, for Normal selections, are required to create a dialog by posting questions on the Advertisement Forum or SOW Forum respectively. The District Contact Person will respond to these questions accordingly.

The Question and Responses forums provide, not only an opportunity for consultants to ask questions on the specific project, but also affords PennDOT an opportunity to provide clarification to the consultants preparing their SOI or Technical Proposal. If the District Contact Person wishes to provide such additional information to the consultants, a dialog can be created in the “Question and Responses” forums where the District Contact Person may post a question, and then answer that question for interested consultants to view. Questions can be posted three days prior to the SOI due date or one day prior to the Technical Proposal due date.

All interested consultants will be able to view all the questions and responses in the Advertisement Forum while only the shortlisted consultants will be able to view all the questions and responses in the SOW Forum prior to the Technical Proposal submission for the Normal Selection Process.

All discussions concerning the project at either of these stages are required to be completed through ECMS's “Questions and Responses” forum. A statement must be included in the advertisement stating that all questions and answers are required to go through ECMS's "Questions and Responses" forum.

If additional clarification or questions arise, during the submission evaluation process, that need to be addressed to fully evaluate the consultant's submission, the IO may elect to hold a follow up meeting or phone call with the consultant.

2.4 – Statement of Interest (SOI)

A SOI is an interested consultant's response to an Advertisement.

ECMS will not accept a SOI after midnight on the due date. PennDOT will not be able to view the consultant's SOI until after midnight of the due date. All submissions must be in .pdf.

Consultants must submit their Statements of Interest in accordance with the procedures listed in the “General Requirements” attached to the project advertisement.

SOI documents must comply with all Advertisement requirements. The IO needs to consider any noncompliance in their evaluations. Consultants are expected to follow detailed instructions such as policy manuals, governmental regulations, etc., during the development of PennDOT projects. Failure to adhere to the Advertisement reflects poorly on that Consulting team's capabilities.

For minor projects, Districts are encouraged to accept standard SOIs and not negatively evaluate the lack of project specificity. Standard SOIs that address the selection criteria may allow for more efficient review and ranking. This should be indicated in the advertisement.

Resumes included with the SOI should be targeted to the Advertisement with project specific individuals at the manager or technical expert level.

2.4.1 – Disqualification of a SOI

Failure to adhere to the General Requirements will result in disqualification of the SOI.

A SOI that includes or considers a firm's costs as a factor must be disqualified. Examples of these costs include: a firm's overhead rate, no charge for direct or indirect costs, an indication of money returned to PennDOT for work not performed, employee hourly rates.

Firms submitting a SOI for Construction Inspection must comply with the requirements in [Section 3.6.3](#) for Field Overhead Rates. Failure to meet this requirement will result in disqualification of the SOI.

2.5 – Scope of Work (SOW) and Department Estimate

2.5.1 – Scope of Work (SOW)

Costly modifications that require time and money can often be avoided with a well-written SOW, and effective Consultant Agreement management. The IO Project Manager and the designated Agreement Team are responsible for creating the SOW for a project. Using the SOW application enables the IO Project Manager to select standardized tasks from the Work Breakdown Structure (WBS) database to build each project's SOW in accordance with the Scoping Field View recommendations. Modifications to the WBS in ECMS are allowed through Strike-through only. ECMS will not allow the information on a WBS to be deleted from or added to.

Each member of the Agreement team shall provide suitable Agreement Details for the tasks in their field of expertise to complete the SOW. The PM should collect the input of Central Office (CO) staff for any SOW for specialized work and services (i.e., photogrammetry, highway lighting, training, IT – system development, etc.).

The WBS is maintained by the CMD and any questions or suggestions concerning the WBS should be directed to the CMD.

The Agreement Team will review and evaluate the SOW. The IO Project Manager may request a review, as necessary, by CO staff for a SOW for specialized work and services (i.e. photogrammetric, highway lighting, training, IT – system development, etc.). The form found in Appendix 2E Review of Scope of Work should be completed for each Team Member reviewing the SOW. The IO Project Manager will maintain all individual comments/approvals on file. Once the SOW is acceptable to all applicable parties, the IO Project Manager will publish the SOW prior to the publishing of either the Shortlisting (Normal Selections) or Final Ranking (Modified Selections), whichever is applicable.

The IO should adhere to the following suggested minimum timeframes for submittal of technical proposals. Exceptions can be made on a case-by-case basis through waiver by the CMS Chief. The IO should give the consultant the maximum amount of time that is available in PennDOT's schedule:

Non-Complex (Minor) Design Project	7 Days
Moderately Complex Design Project	14 Days
Complex Design (Major) Project	21 Days
Construction Inspection	7 Days

2.5.2 – Department Estimate

The Agreement team personnel responsible for preparing or reviewing portions of the SOW need to assist the IO Project Manager in the development of independent work-hours, items for direct costs other than payroll, and other various cost estimates.

Open End Agreements do not have any Work Orders associated with them from the beginning, and therefore Department Estimates for these actions are not detailed. However, each Work Order has associated Scope of Work Tasks and Detail Tasks which are estimated and submitted separately.

Whether working with Parts under a Project Specific Agreement, or Work Orders under a Non Project Specific Open End Agreement or Project Specific Open End Agreement, the understanding of the SOW may change. As a result the Department Estimate may change as well. In order to develop a history of PennDOT's understanding of an Agreement's cost a number of different "snapshots" of the Department's Estimate have been provided. Each "snapshot" saves a copy of the Department Estimate as presented at the time. The IO Project Manager should attempt to reserve as many future "snapshots" as possible to allow for unforeseen changes (Parts have five "snapshots" and Work Orders have five "snapshots" available).

When creating the Department Estimate, it may become necessary to revisit the SOW if it is noted that the SOW has not been developed in sufficient detail.

The Department Estimate, for a new agreement, must be in Final Ranked status prior to publishing the selection.

The Department Estimate, for all supplements, must be in, at least, Initial Status before the consultant can create a price proposal.

2.6 – IO Generates Shortlist

Shortlistings must be kept confidential until the Shortlisting is published in ECMS. Individuals violating this policy may be subject to disciplinary action. See [Section 5.2](#) concerning confidential information.

If less than three firms submit a responsive SOI, refer to [Section 2.8](#).

For Normal Selection Procedures Only

The IO Consultant Selection Committee will meet to confidentially deliberate over the submissions, thoroughly evaluating the merits of each SOI and Qualifications Package based on the advertised selection criteria and commensurate weight applied to each selection criterion in accordance with [Section 3.4](#). See [Section 2.8.1](#) for additional information concerning the composition of the IO Consultant Selection Committee.

The IO Consultant Selection Committee should determine which consultants should be recommended for shortlisting and document the reasons for their recommendation. All back-up documentation, including all checklists, evaluations sheets, and meeting minutes pertaining to the ECMS shortlisting must be maintained in the Agreement file.

The IO Project Manager will enter the Committee's shortlist recommendations into the ECMS under Selection Results. In the "Reason for Shortlisting" section include a discussion on how well the consultant addressed each criterion in their Statement of Interest. The "Reason for Shortlisting" and the "Unpublished Reason for Shortlisting" portions of the screen need to be completed for each shortlisted consultant, whereas only the "Unpublished Reason for Shortlisting/Not Shortlisting" portion of the screen needs to be completed for each consultant not shortlisted. The IO will need to respond to any concerns indicated by the CMD.

After the IO Consultant Selection Committee's recommendations are approved by PennDOT's Deputy Secretary for Highway Administration or authorized designee, ECMS sends a notification to the shortlisted consultants to access the SOW and generate their Technical Proposal. For this reason the SOW needs to be finalized and published prior to publishing the Shortlist.

Shortlist information is confidential and will not be shared with the consultant community until published in ECMS. **Individuals violating this policy may be subject to disciplinary action.**

2.7 – Technical Proposal

The shortlisted consultants, for the Normal Selection Procedures, or top ranked consultant, for the Modified Selection Procedures, will create a Technical Proposal by responding to the published SOW.

In order to standardize task descriptions, the use of attachments with Technical Proposals should be limited. Attachments must be in .pdf format. Space is provided for each task of each Part of an Agreement for Technical Approaches to enable consultants to respond to each task's SOW. It is most desirable for these discussions to directly follow the SOW tasks:

- 1) to have all of the information pertaining to each task located in one place, for administrative purposes, and
- 2) to maintain a degree of consistency in Scopes of Work to allow historical information for use in developing future estimates.

A Technical Proposal that includes or considers a firm's costs as a factor must be disqualified. Examples of these costs include: a firm's overhead rate, no charge for direct or indirect costs, an indication of money returned to PennDOT for work not performed, employee hourly rates.

2.7.1 – Project Specific Quality Assurance/Quality Control (QA/QC) Plan

PennDOT requires a Project Specific QA/QC Plan for all projects. Depending on the scope and complexity of the project, this plan may vary from a standard checklist type plan for small projects to a detailed customized document for a complex project. Technical proposals submitted to PennDOT for evaluation and final ranking will include a proposed "Conceptual" QA /QC Plan for the project.

Generally this "Conceptual" plan shall be limited in detail and address the following at a project overview level:

A. Key Considerations

- 1) Identify key deliverables and their milestone dates
- 2) Name the key project personnel, including:
 - PennDOT staff
 - Consultants – Indicate their accountability
- 3) Communication Plan
 - Identify stakeholders and when to involve them in the project development process
 - Public involvement – Nature and frequency
 - Team communication plan

- 4) Decision-Making – Identify the following:
 - Steps in decision-making
 - Steps in issue resolution

B. Quality Assurance

- 1) Responsibility – Identify the person or agency responsible for performing independent assurance on the key consideration items indicated in Paragraph A above.
- 2) Monitoring – Determine the need for and frequency of the status meetings to review:
 - Schedules
 - Scope
 - Budget
 - Team organization adjustments
 - Approvals
 - Coordination

C. Quality Control

- 1) Identify the appropriate design criteria to be followed.
- 2) Indicate the person or agency responsible for the following:
 - Checking assumptions
 - Verifying calculations
 - Reviewing documentation
- 3) Identify the role of computer programs on project development and indicate how output will be checked.
- 4) Indicate how required drawings will be prepared and checked.
- 5) State the specifications to be followed.
- 6) Identify a process for the preparation and review of the submission of deliverable(s).
- 7) Indicate how design and/or construction costs will be estimated and checked.

The final selected consultant shall refine its "Conceptual" Quality Assurance/Quality Control Plan to include further project requirements as deemed necessary by the IO Project Manager. Generally this Plan shall include a comprehensive schedule with milestone dates, a communication plan, specific QA/QC procedures for deliverables and a project team protocol. The consultant shall develop and include in its final technical proposal the final Project Specific QA/QC Plan.

2.7.2 – Worker Protection and Investment Certification

In accordance with Executive Order 2021-06, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania's Unemployment Compensation Law, Workers' Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws. All firms on the final ranked team will need to attach signed copies of the WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM (found in the ECMS File Cabinet) to the technical proposal for the original agreement. The Department will verify final ranked firms are not included on the Pennsylvania Department of Labor and Industry's (L&I's) public list of non-compliant businesses prior to awarding any contract or grant. Failure to attach the completed CERTIFICATION FORM to the technical proposal will result in a non-responsiveness determination and rejection of the technical proposal. A firm's inclusion on the public list of non-compliant businesses may result in rejection of the technical proposal, non-award and/or other appropriate remedial measures.

The WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM shall also be attached to the technical proposal for all agreement supplements for all firms included in the supplement, and the Department will verify that the firms are not included on L&I's public list of non-compliant businesses prior to creating the legal supplement.

2.8 – IO Generates Final Ranking

Final Rankings must be kept confidential until the final ranking is published in ECMS. Individuals violating this policy may be subject to disciplinary action. See [Section 5.2](#) concerning confidential information.

If less than three firms submit a responsive SOI, the IO must contact the CMD Chief to evaluate the options on proceeding with the agreement. The CMD will review the advertisement to determine if the advertisement contained conditions that arbitrarily limit competition. If found arbitrarily limiting competition, the IO will revise the advertisement and re-advertise. If the advertisement did not contain conditions that arbitrarily limit competition, then the IO will proceed with the selection process.

The IO should interview additional qualified firms and provide to the CMD Chief documented reasons why qualified firms did not submit an SOI.

2.8.1 – IO Consultant Selection Committee

In accordance with the appropriate selection procedures, the IO Consultant Selection Committee, selected on the Agreement Team as indicated in [Section 2.3.1](#), will review the response to advertisement submitted by consultants. A IO Consultant Selection Committee is a working committee which consists of a minimum of five representatives. For the District IO Consultant Selection Committee, at least one member must be a District Executive, Assistant District Executive, or designated delegate. For the Central Office IO Selection Committees, one member of the five representatives must be a Division Chief or Section Chief. Technical personnel from the IO who are thoroughly familiar with the proposed project must be included on this committee.

Ethical considerations mandate that any IO Consultant Selection Committee member, or the member's immediate family, who has a potential conflict of interest with any of the submitted firms cannot participate in this review. Should any potential ethical issues arise, the individual must immediately notify, in writing, the employee's supervisor. The supervisor will contact the appropriate ADE or the CMD Chief for further direction, as necessary as directed by current PennDOT policy.

A fair and impartial evaluation of the consultant's submission is a basic requirement of the qualification based selection process. If a potential conflict may occur, a substitute must be obtained.

The following paragraph must be added to each selection committee member's signed selection documentation (See Appendix 2H memo):

By signing this selection documentation I am certifying that neither I nor any members of my immediate family have a potential conflict of interest with any of the submitted firms.

2.8.2 – Normal Selection Procedures

The IO Consultant Selection Committee uses the submitted Technical Proposal for Final Ranking the Shortlisted consultants. This ranking should be in accordance with [Section 3.4](#).

2.8.3 – Modified Selection Procedures

The IO Consultant Selection Committee uses the submitted SOI for Final Ranking the consultants. This ranking should be in accordance with [Section 3.4](#).

2.8.4 – Final Ranking Process

After meeting with the IO Consultant Selection Committee to review the submitted Technical Proposals, the IO Project Manager enters the recommendation into ECMS, thereby recommending the ranking for the purpose of negotiating an Engineering Agreement. The format of the Final Ranking needs to be standard

across PennDOT since the CO Consultant Approval Committee reviews a large number of these documents in a limited amount of time. Submissions must be free of grammatical and spelling errors, clearly demonstrate the reasons for the order of ranking, address all selection criteria, and must not contain sensitive or inappropriate information in the published reasons.

Failure to follow these requirements may result in the rejection or deferment of agreement by the CO Consultant Approval Committee.

Use the following general guidelines as the Final Ranking is being created:

- In the “Reason for Final Ranking” section include commentary on how well the consultant addressed each criterion for Selecting Consultants, see [Section 3.4](#), through their submission. Address each criterion individually. Bullet points addressing each selection criteria are acceptable, providing that the reasons for shortlisting and the order of ranking are demonstrated. The “Reason for Final Ranking” should clearly justify the rankings to the consultant community. Avoid write-ups where the only distinguishing difference between consultants is the use of adjectives such as “good”, “better” and “best”, or “strong” and “weak”. Do not reference scoring, other consultants, or provide direct comparisons to other consultants in the “Reason for Final Ranking.”
- In the “Unpublished Reason for Final Ranking” section, include reminders intended only to provide PennDOT personnel reasons to further justify the consultant’s ranking to be used for debriefing sessions, if requested. See [Section 3.4.4](#) for further details. This information can only be viewed by PennDOT personnel. This provides an opportunity to provide explicit information or information that supports the ranking in addition to what is provided in the “Reason for Final Ranking.” This may include: scoring, past performance, or other sensitive information not appropriate for publishing. Bullet points are acceptable. Unpublished reasons should not be expanded to contain information more appropriate for the “published” reasons.

Selection Quality Assurance/Quality Control

The District must have an approved Quality Assurance Plan and an approved Quality Assurance/Quality Control individual.

Final Ranking recommendations are submitted directly to the CO Consultant Approval Committee Members and are not independently reviewed by CMD staff. Therefore the approved QA/QC individual at the IO **must** review the final ranking prior to submission to CMD. The review by the QA/QC individual must be in accordance with the approved IO Quality Assurance Plan and in accordance with the requirements of this section.

If the IO does not follow these procedures or frequently submits substandard Final Ranking write-ups, the CMD Chief may require the IO to obtain preapproval by the CMD prior to submitting Final Ranking write-up for future CO Consultant Approval Committee meetings. Preapproval submissions to CMD must be received at least 12 calendar days prior to the scheduled CO Consultant Approval Committee meeting.

Any revisions to the approved QA/QC plan must be submitted for approval to the CMD Chief prior to implementation.

The CMD maintains a record of approved QA/QC individuals. Any revisions to this list must be submitted to the CMD Chief.

2.8.5 – Submission Deadlines

The CMD will develop PennDOT's Consultant Selection Meeting Agenda for the CO Consultant Approval Committee Meeting.

For a Normal Selection or Modified Selection Ranking to be included on the agenda for the Normal Selection or Modified Selection Committee meeting, the IO must submit the final ranking to the CMD Chief by noon,

six calendar days prior to the meeting as scheduled in [Section 2.9.1](#). IOs need to have designated personnel on hand during the meeting time to answer any questions or provide clarifications as the need may arise. The IO must provide an email to the CO Selection Review Contact with a cc to their District's Negotiation Engineer indicating the designated contact person and phone number.

For an Enhanced Modified Selection Ranking to be included on the agenda for the Enhanced Modified Selection Committee Meeting, the IO must submit the final ranking to the CMD Chief by noon, two calendar days prior to the meeting as scheduled in [Section 2.9.1](#). No more than five Enhanced Modified selections will be reviewed in any given week. Final rankings submitted after five have already been received will be deferred to the next week's meeting. The Districts will be notified when selections are deferred.

Exceptions to these requirements will need to be approved by the CMD Chief, prior to placing late or additional rankings on the desired Consultant Selection Meeting Agenda.

For time-sensitive Consultant Agreements contact the CMD Chief and request the scheduling of an interim CO Consultant Approval Committee Meeting.

In ECMS, the Department Estimate needs to be in at least the "Final Ranking" status prior to submission of the Final Ranking to the CMD.

2.8.6 – Ranking Multiple Advertisements

From the list of consultant teams which submit acceptable SOI's in response to the advertisement, a ranking of a minimum of three consultants is developed. If Open End Agreements are being combined, four consultants are ranked for two Agreements, five consultants are ranked for three Agreements, and so on.

A feasible method, for ranking multiple Agreements under one advertisement, follows the procedure as indicated in the following table. The IO should use a method of ranking Multiple Agreements that suits the actual agreements and the acceptable SOI's. Based on performance, qualifications, and selection criteria, the IO may justify selecting a consultant for more than one agreement.

RANKING	CONSULTANT OVERALL RANKING	AGREEMENT 001	AGREEMENT 002	AGREEMENT 003
#1	Consultant A	Consultant A	Consultant B	Consultant C
#2	Consultant B	Consultant D	Consultant D	Consultant D
#3	Consultant C	Consultant E	Consultant E	Consultant E
#4	Consultant D			
#5	Consultant E			

Submission to the CMD Chief Review should be made within 24 hours for all selections for all agreements under a Multiple Advertisement. Failure to do so may result in submitted selection(s) being rejected.

2.9 - CMD Publishes Final Ranking

2.9.1 – CO Approval Committee

Ethical considerations mandate that any CO Consultant Approval Committee member, or the member's immediate family, who has a potential conflict of interest with any of the submitted firms cannot participate in this review. Should any potential ethical issues arise, the individual must immediately notify, in writing, the employee's supervisor. The supervisor will contact the CMD Chief for further direction, as necessary as directed by current PennDOT policy.

A fair and impartial evaluation of the consultant's submission is a basic requirement of the qualification based selection process. If a potential conflict may occur, a committee member will either abstain from voting for a particular selection or obtain a substitute.

The following paragraph must be added to each selection committee member's signed selection documentation:

By signing this selection documentation I am certifying that neither I nor any members of my immediate family have a potential conflict of interest with any of the submitted firms.

All voting members of the committee must approve the final ranking.

Normal Selection Procedures and Modified Selection Procedures

The CO Consultant Selection Approval Committee meets privately the second Wednesday of each month. It is comprised of four voting members. Membership is as follows:

- IO Representative (District Executive, Division Chief or designated delegate) (*Submitted ranking in ECMS constitutes the approval of the IO Representative*)
- Deputy Secretary of Highway Administration or designated delegate
- Secretary of Transportation or designated delegate
- Highway Administration Bureau Director, Project Delivery or designated delegate

Enhanced Modified Selection Procedures

The CO Enhanced Consultant Selection Approval Committee meets each Wednesday. It is comprised of three voting members. Membership is as follows:

- IO Representative (District Executive, Division Chief or designated delegate) (*Submitted ranking in ECMS constitutes the approval of the IO Representative*)
- Deputy Secretary of Highway Administration or designated delegate
- Highway Administration Bureau Director, Project Delivery or delegate

2.9.2 – CO Approval Committee Acts on District Ranking

The applicable CO Approval Committee meets and discusses the ranking. For each selection, they will decide to do one of the following:

- Reject
- Defer
- Conditionally Approve
- Approve

Appendix 2F Consultant Approval Committee Process outlines the procedures involved with these processes.

Reject

The Committee finds the IO ranking is not acceptable in accordance with state or federal policy and procedures, finds that there is insufficient information given to justify the ranking, or feels that the selection is not in the best interest of PennDOT.

If the ranking is Rejected, the project will, most likely, need to be re-ranked or readvertised.

Defer

The Committee requires more information before action can be taken. A word document of the presented write-up will be provided to the IO designated contact person. The IO will make necessary revisions on the word document, with track changes on, which will then be presented to each Committee member for re-evaluation and re-vote. This will be done at the earliest convenience of the Committee members.

Conditionally Approve

The Committee has noted editorial or format revisions be made prior to approval in ECMS. These revisions could have been avoided with proper QA/QC procedures as required in [Section 2.8.4](#). The CMD Chief will reject the selection write-ups in ECMS, and an email will be sent to the IO designated contact person with the revisions noted. The IO will make the required revisions and re-submit. Upon verification that the editorial or format issues were addressed, the final ranking will be published in ECMS.

Approve

The CO Approval Committee unanimously approves the ranking. The CMD Chief publishes the Final Ranking in ECMS. An email will be sent to the IO designated contact person noting the approval of the final ranking.

2.10 - Finalizing Technical Proposal and Submitting Price Proposal

2.10.1 – Scope Clarification Meeting

A Scope Clarification Meeting will save PennDOT money and shorten project delivery time. The main purpose of a Scope Clarification Meeting is to establish mutual expectations for project scope, deliverables, timelines, level of effort, and details of the specific tasks. This meeting should be held after the final selection and prior to the final development of the technical proposal. For the Normal Selection Process, the Scope Clarification Meeting may be held with shortlisted firms prior to final ranking. The Scope Clarification Meeting can consist of a phone call or a physical meeting.

For Open End Agreements, the Scope Clarification Meeting should be held as each Work Order is initiated.

It is mandatory that the prime consultant attend the Scope Clarification Meeting, and it is strongly encouraged to have subconsultants attend the meeting also. If the subconsultants elect not to attend, the prime consultant is responsible to ensure the information is communicated to the subconsultant.

The prime consultant is responsible for taking minutes of that meeting. Issues discussed should be incorporated in the Technical Proposal. PennDOT must verify that the information that was discussed in the meeting was addressed appropriately.

If necessary, a field view may be conducted along with the Scope Clarification Meeting. A field view may be helpful for complex projects.

There is to be no discussion of work-hours during the Scope Clarification Meeting. The purpose of the Scope Clarification Meeting is to establish and agree upon mutual expectations between PennDOT and the consultant team on all aspects of the Technical Scope of Work. Although both parties are precluded from discussing work-hours or price, some projects may require the services of particular individuals for specific tasks which are identified in the consultant's SOI or proposal, and those discussions should be part of the Scope Clarification Meeting.

Use of Office versus Field Overhead Rate

Design and Miscellaneous Service and Construction Management Agreements (only)

A decision must be determined during the Scope Clarification Meeting what overhead rate the consultant is to use in accordance with Section 3.6.3.

Circumstances may exist where consultant employee(s), who are working on a task, are provided a full-time workstation by the consulting firm, while other consultant employee(s), who are working on that same task, are not provided a full-time workstation by the consulting firm. In such circumstances, the task must be split into two detail tasks, one for each office and field overhead rates and the appropriate employee(s) added to the corresponding task.

For firms that do not have a field overhead rate calculated, and the need for a field rate presents itself, a provisional field rate can be calculated and approved.

2.10.2 – Finalizing Tech Proposal

After the Scope Clarification Meeting is held, the top ranked consultant will create a full Technical Proposal which details their approach by responding to the published SOW.

2.10.3 – IO Review/Evaluate Technical Proposal

For the top ranked consultant, the PennDOT Agreement Team will review/evaluate the consultant's technical proposal. The IO Project Manager may request a review, as necessary, by CO staff for a Technical Proposal for specialized work and services (i.e. photogrammetric, highway lighting, training, IT – system development, etc.). The form found in Appendix 2G Review of Technical Proposal should be completed for each Team member reviewing the Technical Proposal. The IO Project Manager will maintain all individual comments/approvals on file. Once the Technical Proposal is acceptable to all applicable parties the IO Project Manager will provide an email to the CMD Negotiation Engineer indicating that:

“The Technical Proposal for the subject agreement has been reviewed by appropriate personnel in the Engineering District and has been approved for its use in the preparation of an engineering Agreement”.

This email documentation should also be kept in the Agreement file.

If the Technical Proposal needs to be revised, the IO Project Manager shall revise the due date for the Technical Proposal to a future date. Once the new date is saved and the SOW is republished, the consultant will be able to make revisions.

Set the Price Proposal due date in ECMS for at least one day beyond the due date for any revised Technical Proposal.

2.10.4 – Price Proposal

When the final ranking is approved and published in ECMS, the final ranked consultant can create a Price Proposal.

The consultant creates a Price Proposal based on the tasks established by the SOW, detailing costs for all Agreement Parts.

The Price Proposal should be created in accordance with the guidelines in [Section 3.6](#).

When the consultant submits the Price Proposal, it is immediately viewable by PennDOT.

2.11 - Evaluating and Negotiating Engineering Agreements

The objective of evaluating and negotiating a Consultant Agreement is to reach a fair and reasonable cost for the work and services to be provided by the consultant to PennDOT. In order to accomplish this, it is essential that all participants have a complete and mutual understanding of the work involved with the SOW. Negotiation requires a combination of judgment, professionalism, fairness, and common sense. The final resolution of all issues should consider the long range effect on the mutual relationship which a Consultant Agreement ought to reflect.

Items to be evaluated include:

- Scope of Work/Technical Proposal
- Consultant's Work-hour Estimate:
 - total hours
 - distribution of hours
- Proposed Staffing
 - Classification
 - Hours
 - Experience Level
- Average Payroll Rates
- Overhead Rate
- Profit or Fixed Fee
- Direct Costs Other Than Payroll
- Direct Costs of Services and Work by Others
- DBE Goal
- Project Schedule
- Escalation
- Any other items deemed necessary to the completion of the consultant's duties will also be evaluated for accuracy, fairness and reasonableness.

This section describes the procedures to be followed after a consultant is selected by the CO Consultant Approval Committee. These procedures apply to *Project Specific Engineering Agreements* and Work Orders under both *Non Project Specific Open End Agreements* and *Project Specific Open End Agreements*.

The Price Proposal is reviewed by the IO Project Manager and the appropriate CMD Negotiation Engineer. If necessary, the Price Proposal may be returned to the consultant for additions/corrections/changes. Only the Negotiation Engineer and the Portfolio Manager can reject Price Proposals in ECMS.

The consultant makes the additions/corrections/changes to the Price Proposal, as necessary, and resubmits it electronically to PennDOT. This process will continue until PennDOT receives an acceptable Price Proposal.

This process is discussed in greater detail in [Section 3.6](#) and [Section 3.7](#).

2.12 – Legal Agreement Created

When both parties agree on a Technical and Price Proposal, a Legal Agreement is created.

When the Legal Agreement is created, certain Terms, Conditions, and Provisions are linked to the legal agreement and through this linking these terms and conditions become part of the Legal Agreement. By approving the Legal Agreement, these additional Terms, Conditions, and Provisions become legally binding.

The following is an abbreviated list of these Terms, Conditions, and Provisions. The entire list is included on the legal agreement.

- * Publication 442, Bureau of Design and Delivery Specifications for Consultant Agreements,
- * Department's Standard Agreement Special Requirements,
- * Standard Method of Payment Special Provisions,
- * Technical Proposal,
- * Price Proposal

The following information should be added in the "Additional Information" for Open End Agreements as indicated:

All Open End Agreements:

Escalation and Direct Costs Other Than Payroll

Any Escalation or Direct Costs Other Than Payroll indicated in the Price Proposal for this Open End Agreement are included for information only. Escalation and Direct Costs Other Than Payroll for individual Work Orders shall conform to current Department limitations, considered on a project-by-project basis.

2.12.1 Fiscal Documents

The IO should create a SAP-7 Form from the Draft Legal Agreement prior to the Legal Agreement being submitted for signatures. IO should enter date in ECMS and notify CO when this is completed. CO will then submit the Legal Agreement for signatures.

2.13 – Consultant, Deputy Secretary, Chief Counsel, Comptroller Approve Legal Agreement

This section describes the procedures to be followed to obtain required approvals and execute Legal Agreements.

If a Legal Agreement is rejected by a reviewing office at any point in the process, the status is changed to "Draft", and an email notification is sent to the Negotiation Engineer and the Agreement Owner. The Legal Agreement will then need to be deleted, the rejection reason satisfied, and another Legal Agreement created and submitted through the process again.

2.13.1 – Consultant

Depending on the configuration of the entity entering into the Legal Agreement with PennDOT, certain protocols must be observed in order for it to be legally enforceable:

- a. **Consultant Agreements with Individuals (Sole Proprietorship).** A Consultant Agreement with an individual will show the individual as the consultant and be signed by the individual's name. A Consultant Agreement with an individual doing business under a fictitious name¹, generally identified by the initials d/b/a ("doing business as") or t/a ("trading as"), shall be signed by that individual, who will need to be identified as "Owner".
- b. **Consultant Agreements with Partnerships.** Partnerships in Pennsylvania are either general or limited. A partnership is defined as "an association of two or more persons to carry on as co-

¹ A fictitious name is any chosen or assumed name, style or designation other than the proper name of the entity using the name; and registration must be made with the Pennsylvania Department of State.

owners a business for profit.”² Both a general partnership and limited partnership can register to be a limited liability partnership.

1. **General Partnership:** The existence of a partnership depends upon the intentions of the parties as to being partners and no formal or written agreement need be executed in order for a valid partnership to exist.³ There is no legal requirement that a general partnership register with the Pennsylvania Department of State. In determining whether a partnership exists, the receipt of a person of a share of the profits of a business is *prima facie* evidence that they are a partner in the business.⁴ A partner can be an individual or a business entity. Any partner of a general partnership may execute a contract on behalf of the partnership.⁵ Thus, the title of the person executing the Agreement should be “Partner.”
2. **Limited Partnership.** In order to form a Pennsylvania limited partnership, a Certificate of Limited Partnership, must be executed and filed with the Pennsylvania Department of State.⁶ The Certificate must set forth the names of the general partners.⁷ General partners in a limited partnership have the same powers as a partner in a general partnership.⁸ Limited partners are granted no such power. A general partner can be a person or business entity. Only general partners may enter into a contract on behalf of the partnership. Thus, the title of the person executing the agreement should be “General Partner.”
3. **Limited Liability Partnership.** Pennsylvania Limited Liability Partnerships (LLP’s) are either general or limited partnerships registered with the Department of State as an LLP.⁹ If the LLP is a general partnership, follow the signature authority rules for general partnerships. If the LLP is a limited partnership, follow the signature rules for limited partnerships.
4. **Business Entity.** Where a separate business entity is a “Partner” or “General Partner” of a partnership and is executing the consultant agreement on behalf of the partnership, the appropriate signatory needs to sign on behalf of the business entity, as set forth in this Section.

a. Example:

ABC Company, Limited Partnership
By. XYZ, Inc., General Partner

By: _____
Jane Doe, President

- c. **Consultant Agreements with Corporations.** A Consultant Agreement with a corporation will show the corporate name as the consultant. Individual(s) authorized to sign on behalf of the corporation will sign and indicate official capacity. There are three different situations in which a corporation can be bound to a contract by one or more signatories.

² 15 Pa.C.S. §8311(a).

³ *Barbet v. Ostovar*, 273 Pa. Super. 256, 417 A.2d 636 (1979).

⁴ 15 Pa.C.S. §8312(4).

⁵ 15 Pa.C.S. §8321(a).

⁶ 15 Pa.C.S. §8511(a).

⁷ 15 Pa.C.S. §8511(a)(3).

⁸ 15 Pa.C.S. §8533(a).

⁹ 15 Pa.C.S. §8201.

1. **Apparent Authority of Senior Corporate Officers.** The signatures of one senior corporate officer is sufficient to bind the corporation in its dealings with PennDOT. A “senior corporate officer” is defined as one of the following: chairperson; president; vice-president (any type - e.g., senior vice president, executive vice-president, assistant vice-president); chief executive officer; and chief operating officer.
2. **Traditional Rule of Two.** Contracts are properly executed for and on behalf of a corporation if signed by two duly authorized officers. One of the officers signing the document must be either the president or the vice president. The other officer signing (attesting) the document must be one of the following: the treasurer, the assistant treasurer, the secretary, or the assistant secretary. While the signature of only the president or vice president would be sufficient, having the secretary/assistant secretary or treasurer/assistant treasurer sign the documents as well does not void the agreement.
3. **Actual Authority.** If the corporation provides sufficient evidence (such as: a resolution by the Board of Directors; corporate by-laws; a letter from the president or vice-president on corporate letterhead; or a letter from corporate counsel) that signature authority has been delegated to another officer or person, that officer or other person may sign instead of the ones listed in subparagraphs 1 and 2 above. The CMD will maintain a file of these evidence of actual authority for reference as necessary.

Closely-Held Corporations. In small or closely-held corporations it is not uncommon for one individual to hold two or more corporate offices. The individual signing may indicate that he or she holds all the offices. In this situation, the individual can execute a document in more than one capacity and his or her signature is treated as that of both offices held.¹⁰

- d. **Consultant Agreements with Limited Liability Companies (LLC’s).** A Consultant Agreement with an LLC will show the LLC’s name as the consultant. A Limited Liability Company (LLC) combines features of a partnership and a corporation. The management and business affairs of a LLC is vested in members, unless the certificate of organization filed with the Pennsylvania Department of State provides that management is vested in one or more managers.¹¹

1. **Member-run LLC.** If the LLC is run by members, any member can execute an agreement on behalf of the LLC.¹² The title of the person signing should be listed as “Member.”
2. **Manager-run LLC.** If the LLC is run by managers, any manager can execute the agreement to bind the LLC, but members cannot.¹³ The title of the person signing should be listed as “Manager.”
3. **Actual Authority.** If the person signing the Consultant Agreement on behalf of the LLC is not a “Manager” or “Member,” proof of signature authority needs to be on file with PennDOT. Proof of signature authority may take the form of a letter from a member/manager of the LLC (as appropriate) on the company letterhead, a letter from counsel representing the LLC, or other documentation evidencing official actions by the member/manager to give the signatory authority to bind the LLC.

¹⁰ *Collins v. Tracy Grill & Bar Corporation*, 19 A.2d 617 (Pa. Super. 1941).

¹¹ 15 Pa.C.S. §§8941 & 8913(5).

¹² 15 Pa.C.S. §8904(a)(1).

¹³ 15 Pa.C.S. §8904(a)(2).

4. **Business Entity.** Where a separate business entity is a “Member” or “Manager” of an LLC and is executing an agreement on behalf of the LLC as a “Member” or “Manager” of the LLC, the appropriate signatory needs to sign on behalf of the separate business entity, as set forth in this Section.

a. Example:

ABC Company, LLC
By: XYZ, Inc., Member

By: _____
John Doe, President

- e. **Consultant Agreements with Joint Ventures.** A Consultant Agreement with joint ventures may involve multiple corporations, multiple partnerships, a corporation and a partnership, a corporation and an individual, or other combinations of business entities. In these instances, one entity will need to be identified as the lead entity in the Statement of Interest and any ensuing legal documents. This lead entity will enter into the Legal Agreement on behalf of the joint venture, and must sign in accordance with a, b, c or d above, depending upon the type of business entity. The individual or individuals that have been granted authority to sign on behalf of all participants must provide a copy of the joint venture agreement stating this.
- f. **Business Entity.** In cases where it is not obvious as to the form of the Consultant’s business entity, it is prudent to confirm the type of business entity under which the consultant operates. For instance, a partnership may be a general partnership or a limited partnership. Another example is where a consultant uses this word “company” in its name. The term “company” does not designate a specific type of entity and therefore clarification should be sought where it is not clear that the “company” is a fictitious name for a sole proprietorship, a corporation, partnership or some other business entity. It is important to confirm the type of business entity entering into the Consultant Agreement to ensure that the agreement is signed by the appropriate signatories in accordance with the requirements set forth in paragraphs a-e above.

2.13.2 – Commonwealth Contractor Responsibility Program (CCRP)

Verify suspension and debarment actions and eligibility of consultants as specified in 2 CFR part 1200; 2 CFR Part 180; Pennsylvania Procurement Handbook, Part 1, Chapter 14; Executive Order 1990-3, and Contractor Responsibility Program.

2.13.3 – Comptroller

Before the Comptroller can approve the Legal Agreement it must have a copy of a Certificate based on the Commonwealth Contractor Responsibility Program (CCRP) as well as a valid encumbrance document. The CCRP certificate will be provided by the CMD and the encumbrance document will be provided by the IO.

2.14 – PennDOT Executes Agreement

If both parties agree on all of these items, a Legal Agreement is executed.

IO creates Consultant Evaluations at this time, and consultant acknowledges it. See [Section 4.6.7](#) for additional information concerning Consultant Evaluations.

2.15 – IO Issues Notice to Proceed (NTP)

The consultant is not allowed to begin work and services until issued a NTP through ECMS. Each Part of a Project Specific Agreement or Supplement, if not previously given, will need direct action by the IO Project Manager.

NTP for Work Orders under an Open End Agreement occurs at the time of the consultant's signature.

Costs incurred prior to NTP are not eligible for reimbursement. See [Section 5.6](#) for additional information.

Chapter 3 – Selection Process Reference Material

3.1 – Introduction

To properly complete the information necessary to create a Consultant Engineering Agreement a thorough understanding of the processes and description of terms used in ECMS is essential.

This chapter provides information associated with Agreement Types providing descriptions of each type and conditions for usage.

There are several different Selection Procedures to retain a consultant. This chapter provides the criteria necessary for using each procedure.

PennDOT strives to guarantee that the most qualified consultant is selected for an agreement. This Chapter outlines important steps to ensure that Qualification Based Selections are used in acquiring consulting services.

This Chapter provides information on the different Methods of Payment allowed for agreements and appropriate conditions for the use of each.

Providing a Consultant Agreement at a fair and reasonable cost, to both the consultant and PennDOT is crucial. This Chapter provides information for creating, reviewing, and submitting price proposals that will assist in creating such an agreement. If PennDOT does not feel that the price proposal submitted by the consultant meets the requirements, negotiations between the consultant and PennDOT may be necessary.

3.2 – Agreement Type

The basic forms of Consultant Agreements are:

1. Project Specific Agreement
2. Open End Agreement
 - A. Non Project Specific
 - B. Project Specific
 - C. Task Specific

When used in this Publication, the term 'Agreement' will refer to any or all of them.

3.2.1 – Project Specific Agreement

A *Project Specific Agreement* is the traditional type of Consultant Agreement between PennDOT and a consultant for the performance of a fixed SOW related to a specific project, or projects.

3.2.2 – Open End Agreement

A *Non Project Specific Open End Agreement* requires a consultant to provide work and services on an as-needed or on-call basis. Work Orders are generated to stipulate what work and services are required for specific projects.

A *Project Specific Open End Agreement* incorporates the Work Order concept for a specific project. The Consultant Agreement is based on a general SOW with a maximum dollar value and specifies the expertise needed for the project. A Work Order is generated for the portion of the project where main and detail tasks can be identified.

A *Task Specific Open End Agreement* provides for the repetitive performance of a specific work task, and functions similar to the standard Open End Agreement.

Non-Project Specific Open End

The intent of an Open End Agreement is to enable the IO to quickly respond to issues that arise from time to time in a project's development. This type of situation arises, for example, when negotiations with a different consultant agreement break down. The IO can then remove the task(s) from that Consultant Agreement and use a Work Order under an Open End to accomplish the work and services.

Another use of Work Orders is when the IO finds that a task intended to be performed in-house cannot be done in a timely manner. The capacity allocated for each Engineering District needs to be reserved for these situations and should not be used for mainstream design purposes.

An Engineering District needs to plan appropriately for Consultant Agreements for design or larger construction inspection projects, allowing adequate time for the various steps required for Project Specific Agreements. This approach will reserve the Open End capacity for emergency situations. By using the Open End Agreement tool appropriately, an IO should be able to retain a maximum number of options to fulfill their mission with a minimum of interruptions for Consultant Agreement administration.

An Open End Agreement identifies the general SOW, which can be provided, but does not identify the specific projects. The specific SOW and the specific project are identified in each Work Order generated under the Open End Agreement.

The Work Order process is discussed in detail in [Section 4.5](#).

Capacity Limits -

Capacity Limits for District Non-Project Specific Open-end Agreements have been established at the following amounts:

District	Approved Limit*
1-0	\$26,000,000
2-0	\$32,000,000
3-0	\$32,000,000
4-0	\$35,000,000
5-0	\$32,000,000
6-0	\$54,000,000
8-0	\$43,000,000
9-0	\$36,000,000
10-0	\$45,000,000
11-0	\$50,000,000
12-0	\$35,000,000

*Capacity Limits for Non-Project Specific Open End Agreements will be evaluated and revised as necessary.

The CMD Chief has the authority to adjust the capacity within each District. Any adjustments must be coordinated with the FHWA and will be documented by way of letter kept on file in CMD.

Each District may have up to their approved Open End Capacity Limit total value of Open End Agreements in force simultaneously with no limits on the number of Consultant Agreements or the type of Consultant Agreement (engineering services, environmental studies, construction inspection, etc.). Upon submission of an advertisement for an Open End Agreement forward to CMD an accounting of all current Engineering District Open End Agreements showing that there is capacity for the requested Consultant Agreement.

Submit a *Status Report – District Open End Agreements* with the submission of the advertisement. Approval of the advertisement of the Open End will be dependent on the Engineering District's capacity as compared to their Open

End Capacity Limit. An advertisement may be published even though an Engineering District's chart does not currently show capacity if it is anticipated that Open End capacity will become available within a reasonable time. Capacity must be available prior to execution of the agreement.

This status report with the available Open End Capacity must be submitted to the CMD concurrent with the submission of an advertisement request for additional Open End Agreements. Instructions for creating a .pdf with the available Open End Capacity is located on the Shared Drive at: [\penndot shared\Consultant Agreements\District OE Capacity](#).

The maximum allowable amount of an Open End Agreement is \$3.0 million. To promote flexibility and diversity, the proposed dollar amount of each Open End should be varied depending on the complexity and nature of work. Districts must remain committed to providing opportunities to consulting firms of all sizes and are encouraged to use a variety of open end project types and total agreement sizes to allow smaller firms the ability to provide engineering services.

The maximum allowable amount of an individual WO is \$1.0 million. The maximum time period for a Non Project Specific Open End Agreement is five years.

When consultant work and services for any single project are anticipated to cost in excess of \$1.0 million, the Project Specific Engineering Agreement or Project Specific Open End Agreement must be used.

Open End Agreements that meet any of the following conditions will not count towards the IO's approved limit of Open End Agreements:

1. Consultant Agreements with less than six months until their expiration date.
2. Consultant Agreements where the encumbered amount under executed WO's **exceeds 70%** and the amount billed to date **exceeds 50%** of the maximum amount of the Open End Agreement.

Consultant Work Orders for projects with 100% state funding will not count towards capacity.

Project Specific Open End Agreement

The Project Specific Open End Agreement is used for a project where the general SOW, maximum dollar amount, and required expertise can be determined but the main and detailed Work Tasks for the entire project are undeterminable at the time of the Consultant Agreement execution. Good examples of projects that conform to this definition are those that require the study of multiple alternatives, as well as bridge designs where PennDOT does not know whether a replacement or rehabilitation is appropriate. In the case of a bridge design, the first Work Order should consist of an in-depth inspection to determine the SOW of the remainder of the Consultant Agreement. Individual Work Orders will be generated to identify the main and detail Work Tasks for the next known portion of the project's SOW as that scope becomes evident.

The Work Order process is discussed in detail in [Section 4.5](#).

Capacity Limits –

There is no dollar limitation placed on Work Orders under a Project Specific Open End Agreement. However, the total dollar amount of the Open End Agreement must be monitored on a regular basis in order to maintain a reasonable total cost of all anticipated Work Order's under the advertised scope. If the District has a Certified Negotiator, the District is authorized to negotiate, create, and submit the legal agreement for Project Specific Open End Work Orders and Amendments which are less than \$1,000,000.

For Work Orders greater than \$1,000,000 or when a District does not have a Certified Negotiator, only a CMD Negotiation Engineer is authorized to negotiate the cost of a Project Specific Open End Work Order and Amendment(s) and follow through the execution process.

Task Specific Open End Agreement

The Task Specific Open End Agreement is used for a project where there is repetitive performance of a specific task such as, surveying and utility designating and locating.

Task Specific Open End Agreements must follow the same time restrictions and maximum allowable limitations for the agreement and work orders as indicated for Non Project Specific Open End Agreements. However, Task Specific Open End Agreements do not count toward the district's capacity.

3.3 – Selection Process

3.3.1 – Introduction

PennDOT uses the following methods of selecting a consultant to provide services:

- 1) Normal Selection Procedures – Discussed in Chapter 2
- 2) Modified Selection Procedures – Discussed in Chapter 2
- 3) Enhanced Modified Selection Procedures
- 4) Sole Source Selection Procedures
- 5) Emergency Selection Procedures

Enhanced Modified Selection Procedures can be used for non-inspection work for non-complex or moderately complex projects as defined in DM1A. The use of the Enhanced Modified Selection Procedures is to be used only when the project is on an expedited schedule, should be designated by the ADE for Design, Portfolio Manager, Bureau Director, or Division or Section Chief, and is subject to approval by CMD.

This procedure requires the interested consultant to submit a SOI that serves as an abbreviated Technical Proposal for the purpose of selection. The IO will rank the top three consultants from this SOI.

The IO must ensure that complete, definitive information can be obtained solely from the review of SOIs and Consultant Qualification Packages prior to designating the Enhanced Modified Selection Procedure. If the nature of the project is such that additional information is needed to justify the final ranking, normal selection procedures should be used to obtain additional information from a Technical Proposal or Oral Presentation.

The Enhanced Modified Selection Procedures differ from the Modified Selection Procedure due to an expedited schedule of the CO Consultant Approval Committee.

The processes for the selection procedures listed above are explained in detail in [Chapter 2 – Selection Process Procedures](#). The selection criteria for these selections are Qualification Based Selection. These criteria are outlined in [Section 3.4](#).

The remaining procedures are used in specific circumstances or to secure specific types of services.

The procedures for selecting a consultant based upon the **Sole Source Selection Procedures** or the **Emergency Selection Procedures** are outlined in [Section 3.3.2](#) and [Section 3.3.3](#) respectively.

Regardless of the selection procedures used, the professional qualifications, experience, conduct of the consultant, and quality product statements will need to be prime considerations when entering into an Agreement for consultant work and services.

Chart 3.1 – Typical Selection Procedures for Agreements summarizes the types of Consultant Agreements for which the various selection procedures are typically used.

Chart 3.1 - TYPICAL SELECTION PROCEDURES FOR AGREEMENTS					
TYPE OF AGREEMENT	NORMAL SELECTION PROCEDURE	MODIFIED SELECTION PROCEDURE	ENHANCED MODIFIED SELECTION PROCEDURE	SOLE SOURCE PROCEDURE	EMERGENCY SELECTION PROCEDURE
Project Specific Engineering Agreement	All Non-inspection Work	All Non-inspection Work (non-complex or moderately complex projects)* National Bridge Inspection Standards (NBIS) Bridge Inspection Construction Inspection	All Non-inspection Work (non-complex or moderately complex projects)* on an expedited schedule	When Justified	When Justified
Project Specific Open End Agreement	All Work *	All Eligible Work **	All Eligible Work ** on an expedited schedule	N/A	N/A
Non Project Specific Open End Agreement	N/A	All Work *	CMPM (with presentation) *	N/A	N/A
Task Specific Agreement	N/A	Surveying Utility Designation and Location	N/A	N/A	N/A

* Selection procedures for CMPM must be evaluated on a case by case basis.

**Work must be eligible to use Modified Selection Procedures or Enhanced Modified Selection Procedures for a Project Specific Open End Agreement, as per Section 2.1 and this Section.

3.3.2 – Sole Source Selection Procedures

Consultant Agreements may be awarded on a sole source basis when: one of the following apply:

Federal Aid Agreements (follow 23 CFR 172.7(a)(3))

1. A federal statute or federal regulation exempts the services from the competitive procedure.
2. The service is available only from a single source.
3. There is an emergency which will not permit the time necessary to conduct competitive negotiations.
4. Competition is determined inadequate after solicitation of a number of sources.

Non-Federal Aid Agreements

1. A state statute exempts the services from the competitive procedure.
2. It is clearly not feasible to award the contract for services on a competitive basis.
 - a. The consultant already has technical knowledge of and familiarity with the state route or project in question because of services previously performed on the route or project; or
 - b. Retaining a new Consultant would involve the repetition of work and services already completed.
3. The contract for services is in the best interest of the Commonwealth.
4. The service is available only from a single source.
5. There is an emergency which will not permit the time necessary to conduct competitive negotiations.
6. Competition is determined inadequate after solicitation of a number of sources.

Justification

The use of a Sole Source Selection process will be the rare exception. The IO must justify the need for a Sole Source Selection by using Appendix 3A – Sole Source Fact Sheet and Checklist for Services. The IO must forward all Sole Source requests to the CMD for processing.

Justification should be kept to the minimum necessary to clearly and concisely support PennDOT's sole source decision. Unsupported personal opinion, personal acquaintance with the consultant, or the consultant's prior association with PennDOT is not acceptable justification for a sole source Agreement. Terms and phrases such as "unique experience", "uniquely qualified," "only qualified consultant," and similar unsupported statements will not be acceptable justification.

It is most unusual when a sole source award can be justified on the basis that only a single consultant is capable of providing the service. While PennDOT personnel may only be aware of a single consultant, there are many sources of information that can be used to identify consultants. The following is a partial listing:

- Bureau of Design and Delivery Contract Management Division
- Compliance officers
- Other state or federal agencies with similar needs
- State licensing agencies
- Professional organizations
- Local government organizations
- Internet Search

Sole Source Approval

When the CMD receives the Fact Sheet, it will seek approval from the Office of Chief Counsel, and the Deputy Secretary for Highway Administration. Once the Fact Sheet is approved, the IO will be directed to have the Portfolio Manager generate the necessary screens in ECMS for standard follow-through. The final approval should be sent to the Office of the Comptroller.

Under no circumstances will a consultant be advised that PennDOT is seeking approval for a Sole Source Agreement until written approval is obtained.

3.3.3 – Emergency Selection Procedures

Emergency Selection Procedures must comply with the Publication 625 and Publication 550. Refer to Publication 625 – *Expedited Post Disaster Project Delivery Manual* for design guidance for expedited project delivery in response to disasters affecting transportation. Publication 625 is located in PennDOT’s website under “Forms, Publications, and Maps”. It is used in conjunction with Publication 550 – *Disaster Recovery Manual*. Publication 550 is a PennDOT internal document. It can be located on the Shared Drive at [\penndot_shared\Bureau of Maintenance and Operations\Disaster Recovery\Disaster Recovery Manual_Pub_550](#).

Consultant services can be acquired in emergency situations without following other selection procedures in this Publication when it is determined by authorized personnel that:

- 1) An Emergency Declaration has been signed by the appropriate official (typically the Deputy Secretary for Highway Administration);
- 2) The required services are urgent and unexpected;
- 3) There is insufficient time to comply with one of the other selection procedures or other requirements ;
- 4) Failure to acquire such services immediately would endanger the Commonwealth, its property, or the health and well-being of its employees, residents, patients, etc.

Situations caused by procrastination are not considered to be emergencies.

Contact the Deputy Secretary for Highway Administration to determine if a situation will be declared an emergency. If an Emergency Declaration is executed, the IO selects the consultant which it determines to be the best qualified consultant available.

After approval is obtained and the consultant is selected, the consultant may be given verbal NTP. This must be followed up by a written NTP with the date that the verbal NTP was given.

Technical and Price Proposals, including a copy of the signed Emergency Declaration, can be entered in ECMS at this time. The agreement can be negotiated to ensure that a fair and reasonable cost is obtained. The agreement must be executed in ECMS, and a SAP-7 form must be completed prior to any invoicing.

Do not include any work that is not specifically covered by the Emergency Declaration.

3.4 – Selecting Consultants – Qualification Based Selection

3.4.1 – Considerations for Shortlisting/Final Ranking Consultants

PennDOT forms Selection Committees, for both IO selection and CO selection, to review the consultants’ response to the advertisement and to determine the most qualified interested consultant based on this review. A fair and impartial evaluation of the consultant’s submission is a basic requirement of the qualification based selection process.

Each member of the IO Selection Committee must individually assess the consultants’ SOI’s or Technical Proposals, and Qualification Packages of each member of the responding teams. Consider each of the criteria for the project that was presented in the project advertisement. The results of each committee member’s review should include the reviewer’s name and score for each consultant for each established criteria, as a minimum. These reviews should be documented in spreadsheets, working papers, matrices, and any other means necessary for review.

Each member of the IO Selection Committee is responsible for their own review of the submissions. A review of a summary of the submissions is not a sufficient review.

The selection write ups presented in ECMS should address each of the criteria shown in the advertisement for each candidate.

The strengths and weaknesses of each consultant's submission should be discussed and documented. Documentation should be in the form of minutes of the IO Selection Committee's discussions.

Take into account whether the consultant provided specific examples to support the objective. Submissions should not have just reiterated the criteria shown in the advertisement.

Following are considerations under the evaluation criteria that may be discussed:

1. Understanding the Problem

- Does the proposal demonstrate an understanding of the problems to be solved?
- Does the proposal convincingly show a depth of understanding of the problem?
- Has the consultant made an accurate assessment of the problem?
- How consistent are the scope of effort and resources proposed by the consultant with the size and nature of the problem?
- Are consultant statements, conclusions, and recommendations based on sound principals or do they reflect mere opinion?

2. Soundness of Approach

- Is the technical approach fully responsive to all written specifications and requirements?
- Does the technical discussion show recognition and complete understanding of all problems and requirements?
- Are the specific objectives of the proposal clearly stated?
- Are these objectives realistic in view of the time, equipment, and professional experience as stated in the proposal?
- Are there any ambiguities or conditional responses in the proposal?
- Are reasons given for any deviations from PennDOT's SOW?
- Are technical weaknesses identified; and does the proposal indicate how they will be overcome?
- Are the solutions and plans proposed feasible?

3. Cost Effective Construction Techniques

- In the solution process, did the consultant identify other problems which would broaden the SOW or require additional construction or maintenance costs?
- Are any techniques, methods or solutions proposed which could reduce construction or maintenance expenses? If so, have they been expanded to identify specifics of those proposed solutions?
- An evaluation of a SOI or Technical Proposal that includes or considers a firm's costs as a factor is NOT allowed. Examples of these costs include: a firm's overhead rate, no charge for direct or indirect costs, an indication of money returned to PennDOT for work not performed, employee hourly rates.
 - Work hours reduction through cost effective techniques is allowed.
 - Discussion of costs in dollars will lead to disqualification.

4. Ability to Perform Work

- Does the project team have the technical resources required?
- Does the project team have qualified personnel needed to perform the work and services in the required time?
- Are specific dates or timeframes for accomplishments of tasks provided on a Gantt, PERT, or similar type chart? Are these dates or timeframes realistic?

5. Management Strategy

- Is the consultant's strategy to ensure a quality product reasonable?
- Does the consultant's Project Manager have experience in managing the components of this project?

6. Construction Inspection

- How many inspectors in each classification(s) were requested by the advertisement compared to the personnel the consultant is proposing to provide?
- Are the proposed personnel appropriately trained and certified?

3.4.2 – Documenting Selection Process

Documenting the Selection Process is extremely important. The documentation and minutes must correlate with the rankings made by the IO Selection Committee. At a minimum the following items must be documented:

- Each step of the procedures used for the selection to show how rankings and selections are made.
- Any checklists
- Individual scores and ranking sheets of each member of the Selection Committee with each member's name included on the evaluation sheets.
- Minutes of all meetings – as indicated above, this includes the strengths and weaknesses of each consultant's submission.

All selection documentation is considered confidential as indicated in [Section 5.2](#).

All selection documentation should be maintained as indicated in [Section 5.3](#).

3.4.3 – Conduct Oral Presentations

For Consultant Agreements for unusual, complex projects, or CMPM, the IO may require oral presentations of the shortlisted consultants to further evaluate a consultant's qualifications. Although not mandatory, oral presentations have been found to be very enlightening in making final selections and are highly recommended.

If held, structure and conduct the presentation in a formal manner. Consultants should be given the opportunity to present their qualifications and explain how they intend to provide the necessary personnel and work and services to complete the project. Specific questions should be asked of each consultant to clarify points concerning their qualifications submission, written proposal, or oral presentation. Strict time limitation and a consistent set of questions should be established for each consultant's presentation.

If the IO desires to conduct Oral Presentations and did not include them in the Advertisement as indicated in [Section 2.3.3](#), approval must be obtained by the CMD Chief.

3.4.4 – Debriefing

When a comment is included in the unpublished reasons that significantly addresses why a consultant is not selected, it is strongly recommended that this issue is communicated to the consultant. This can be used as a communication tool to make the consultant aware of factors which adversely impacted their ranking.

If requested, debriefings may be given to a non-selected consultant. Information given must be factual and precise, and presented in a manner that intends to help the consultant improve future submissions, or gives reasons for disqualification based on the parameters in the advertisement.

A consultant is entitled to justification when not selected for an Agreement. This is particularly true in cases where proposal preparations were an extremely costly process. Therefore, the consultant has a right to know where their proposal failed, and why another submission was selected.

Include a brief summary of the reasons for not ranking a Consultant #1 on the Final Ranking screen under the "Unpublished Reason for Ranking #__" area. This information is not to be shown to consultants, but it is useful for reminding the IO Project Manager of the factors that the Committee used in its determination. This provides an opportunity to provide explicit information or additional information supporting PennDOT's ranking, such as scoring, past performance or other sensitive information not appropriate for publishing.

Under no circumstances will PennDOT provide the consultant with another consultant's proposal. Consultants will not be informed of the individual or collective scores compiled in the Agreement file.

Records dealing with the procurement of a consultant are exempt from disclosure under the Right to Know Law. However, any documentation created after the proposals were evaluated and a decision was made, are not exempt and are considered public. Therefore, any written documentation at this point should be considered public record.

3.5 – Method of Payment

The following methods of payment are utilized by PennDOT for Consultant Agreements:

1. Cost Plus Fixed Fee
2. Lump Sum
3. Cost Per Unit of Work
4. Specific Rate of Compensation
5. Specific Rate of Compensation - Construction Inspection

The chart entitled “Chart 3.2 - Typical Methods of Payment for Agreements” summarizes the use of the various methods of payment.

Chart 3.2 - TYPICAL METHODS OF PAYMENT FOR AGREEMENTS

TYPE OF AGREEMENT	Project Specific Engineering Agreement	Project Specific Open End Agreement	Standard Open End Agreement	Task Specific
COST PLUS FIXED FEE	• Preliminary Engineering • Final Design • Field Surveys • Studies • Bridge Inspection	• Preliminary Engineering • Final Design	• Preliminary Engineering • Final Design • Field Surveys • Studies • Right-Of-Way(ROW) Acquisition	• ROW Acquisition
LUMP SUM	• Preliminary Engineering • Final Design		• Photogrammetric Mapping Services	
COST PER UNIT OF WORK	• Bridge Inspection		• Bridge Inspection • Field Surveys	• Field Surveys • Utility Designation and Locating
SPECIFIC RATE OF COMPENSATION	• Review of Shop Drawings • Consultation During Construction • Construction Inspection • Design, Construction Management Support	• Review of Shop Drawings * • Consultation During Construction*	• Construction Inspection • Specialized Services ○ Cultural Resources ○ Environmental Studies ○ ROW Services ○ Geo-tech Services • Review Activities	

* When shop drawing review and consultation during construction is performed under a Work Order under an Open End Agreement, the method of payment will normally be Specific Rate of Compensation unless another method of payment is already established.

If a multiple-part Project Specific Agreement contains a Lump Sum Part, do not issue Notice to Proceed on the Lump Sum Part if any other Part for that project is in “Active” status. In other words, for a project no Lump Sum Agreement Part can be chargeable concurrently with another Agreement Part being chargeable.

3.5.1 – Cost Plus Fixed Fee Method

The Cost Plus Fixed Fee Method is used when the SOW is fairly well-defined, but the total engineering effort required to complete the work cannot be estimated precisely. The consultant is paid an agreed-upon amount for a fixed fee, based on actual SOW completed, together with all actual costs incurred in the performance of the work and services.

This is the most common method used by PennDOT and reimburses the consultant for actual direct and indirect costs attributable to the project plus a predetermined lump sum amount for fixed fee (profit). The Cost Plus Fixed Fee method of payment establishes the following Categories of Compensation with respect to each firm's budget: 1) Direct/Indirect Labor; 2) Profit; 3) Other Direct Costs; and 4) Predetermined Amount.

Once both parties have agreed to the work effort in an executed Consultant Agreement, a change in the amount of fixed fee can only be made if the SOW changes.

3.5.2 – Lump Sum Method

The Lump Sum Method is used when the SOW is well-defined and the total consulting effort can be estimated accurately.

The consultant agrees to perform the work for a single total lump sum amount. This amount includes all direct labor, overhead, and profit. Direct cost other than payroll, and the direct cost of work and services by others are separate categories of compensation. The lump sum amount is arrived at through the development and evaluation of estimates of each cost element for the anticipated work and services. The Lump Sum method of payment establishes the following Categories of Compensation with respect to each firm's budget: 1) Profit including Direct/Indirect Labor and Profit; 2) Other Direct Costs; and 3) Predetermined Amounts.

Once both parties have agreed to the work effort in an executed Consultant Agreement, a change in the amount of lump sum can only be made if the SOW changes materially, or the exclusion identified in the contract as a task that would warrant a supplement.

3.5.3 – Cost Per Unit of Work Method

The Cost per Unit of Work Method is used when the SOW is well-defined, the consulting effort per unit can be estimated accurately, and there are a repetitive number of similar units to be performed.

The consultant is paid on the basis of a lump sum cost for each unit of work performed. The lump sum cost includes all direct labor, overhead, profit, and direct costs other than payroll. The cost per unit is arrived at through the development and evaluation of each cost element for the unit of work. The Cost Per Unit of Work method of payment establishes the following Categories of Compensation with respect to each firm's budget : 1) Unit of Work including Direct/Indirect Labor, Profit, and Unit Related Other Direct Costs; 2) Non Unit Related Other Direct Costs; and 3) Predetermined Amounts.

3.5.4 – Specific Rate of Compensation Method

The Specific Rate of Compensation Method is used when the SOW and the required work effort cannot be determined at the time the Consultant Agreement is executed. A specific rate of compensation is established for the part by multiplying the payroll by the specific rate factor established in each Consultant Agreement.

The Specific Rate of Compensation – Construction Inspection method is used for construction inspection and documentation services and establishes a maximum hourly wage rate for each inspection classification for a calendar year.

The specific rate of compensation factor includes reimbursement for direct labor, overhead (OH), and profit.

The Specific Rate of Compensation method of payment establishes the following Categories of Compensation with respect to each firm's budget: 1) Specific Rate including Direct/Indirect Labor and Profit; 2) Other Direct Costs; and 3) Predetermined Amounts.

Straight-time Specific Rate Factor

A straight-time, specific rate factor (SRF) is calculated by:

$$SRF = 1 \text{ (representing payroll)} + \#.#### \text{ (consultant's OH)} + [1 \text{ (representing payroll)} + \#.#### \text{ (consultant's OH)}] * 0.### \text{ (profit factor)}$$

Overtime Specific Rate Factor

There are two methods for calculating SRF for overtime (OT) depending on whether the consultant used premium pay in their calculation of their overhead rate.

If a consultant did **NOT** include premium pay in their overhead calculation, the following method should be used:

$$SRF = 1 \text{ (representing payroll)} + 0.5 \text{ (for OT)} + \#.#### \text{ (consultant's OH)} + 0.### \text{ (profit factor)}$$

If a consultant **did** include premium pay in their overhead calculation, the following method should be used:

$$SRF = 1 \text{ (representing payroll)} + \#.#### \text{ (consultant's OH)} + 0.### \text{ (profit factor)} + (1.0 + OH)/2$$

The specific rate factor may be higher in this method. This calculation will address overtime within the calculation for the overhead rate

3.6 – Price Proposal Evaluation

3.6.1 – Introduction

The determination of allowable costs must be in accordance with the federal cost principles, as contained in the FAR.

Negotiation Position Memorandum

A Negotiation Position Memorandum (NPM) must be created for each Agreement, Supplement, and Work Order.

CMD will create the NPM for Agreements, Supplements, and Work Orders created in Central Office. For Supplements and Work Orders delegated to the District, the NPM must be created in the District.

A procedure to create an electronic NPM is located in the District folder on the Shared Drive at:

<P:\penndot shared\Bureau of Design\Design Services Division\Consultant Agreement Section>

Instruction for using this process is also located in each District's folder. Any questions concerning this electronic NPM should be directed to the CMD Negotiator.

Refer to Appendix 3B – Negotiation Position Memorandum for a paper sample of an NPM.

Costs by Others

Subconsultants will be held to the same guidelines as prime consultants, and evaluation of their technical and price proposals should follow the same procedures.

3.6.2 – Payroll

Direct labor is the cost of salaries for those personnel such as Project Manager, engineers, technicians, drafters, CADD operators, survey personnel, and clerks that are directly chargeable to the project.

All consultant personnel must be on the consultant's, PennDOT approved roster prior to working under a PennDOT Agreement.

The consultant's estimate of its in-house Direct Payroll Cost, presented as a breakdown of work-hour requirements into the work breakdown structures tasks and detail tasks, is required to accomplish the project. Each detail task will have the classifications of employees to be used with the average hourly rate for each classification, extended and summated to arrive at the total estimated payroll cost. The work breakdown structures tasks and detail tasks so presented in this estimate shall be identical to those used in the consultant's Cost Accounting Records for the work and services performed under the Agreement.

Proposed Project Employees

The consultant shall submit to PennDOT the names of the employees proposed to be used on the project. Their payroll classification, actual current payroll rate and the date the payroll rate was effective will be provided by ECMS. During the life of the contract, the consultant shall notify PennDOT, through ECMS, of proposed wage rate increases and request approval prior to placing them into effect. When PennDOT objects to the amount of such increase, the wage rate will be rejected and justification will be required. Submissions for approval of payroll rate increases are to be made through ECMS indicating the proposed payroll rate with the new effective date.

Direct Payroll

For Consultant Agreements advertised on or before November 17, 2003, a limitation on direct payroll rates may be included in the Legal Agreement. For Consultant Agreements advertised after November 17, 2003, no limitation for direct payroll is established. For construction inspection, direct payroll rates are limited by classification as described in the SOW or other directives promulgated by PennDOT.

For Cost Plus Fixed Fee method of payment, the fixed fee/profit and overhead amounts are computed based on direct payroll, the reasonableness of the direct payroll rate is an effective tool for achieving a reasonable cost.

In the event that PennDOT is evaluating a proposal for work and services that are extraordinarily difficult or unique, a higher average payroll rate can be considered. In these cases, the consultant will need to present a justification that shows that the work and services at hand is indeed out of the ordinary. IO Project Managers need to be selective in their review of these cases, and acceptance should be the exception.

When the direct payroll costs exceed expected limits and the work-hours are in line with the District estimate, the consultant may have assigned their top personnel. Discussions should occur on the experience level of such personnel to fully compare the work-hour estimate with the qualifications of these personnel.

For other methods of payment, similar limitations, adjusted for the demands of the work and services being considered, can be applied as deemed applicable.

Premium Pay (Design and Miscellaneous Services Agreements)

The maximum premium pay allowed by PennDOT is 50% of the actual hourly payroll rate for overtime and 20% of the actual hourly payroll rate for hazardous duty. Premium pay is permitted only if the consultant has a written company policy for the payment of such premium to its employees and charges all clients at that same rate. This written policy must be included in the consultant's final Technical Proposal, after final selection is determined, as an attachment to the Consultant Agreement. No employee shall receive overtime exceeding the normal rate paid by the consultant's overtime policy.

No overhead or profit is allowed on the premium portion of overtime or hazardous duty pay.

If premium pay is provided in the Agreement, the compensation for overtime and/or hazardous duty must be authorized in writing by the IO's Project Manager before such costs are incurred. Premium pay will not be provided in the Consultant Agreement or invoiced unless the premium pay can be justified by the consultant.

This justification must show and conclude that deliverable timeframe demands cannot be met even if all available employees are assigned to the project.

To justify premium pay the consultant must demonstrate there are insufficient forces to provide the required work and services in the required timeframe by indicating:

- The number of personnel in that classification
- The total number of hours available for that classification during the required time period
- The total number of hours required for that classification during the required time period
- Why it is not prudent to hire or assign additional personnel in that classification.
- The consultant could also justify premium pay if a direct saving to PennDOT can be demonstrated.

If hazardous duty pay is requested, it should be in concurrence with the current policy outlined in the Department of Transportation Personnel Manual.

Work Shift Differential

PennDOT will not allow any charges for pay scale differences in work shifts.

Work-hour Estimate

Cost Plus Fixed Fee – If the consultant's total work-hour estimate exceeds PennDOT's total work-hour estimate substantially, the work-hours must be evaluated.

If negotiations are necessary, the IO needs to develop a breakdown by task of comparisons between PennDOT's and the consultant team's estimates. For those tasks which are outside an acceptable range, the consultant should provide detailed justification for their estimate, including all assumptions and production rates on a task-by-task basis. Using these tools, a negotiation position as to the reasoning for PennDOT's estimate needs to be developed through internal discussions among all contributing team members prior to discussions with the Consulting team.

PennDOT will allow a task entitled Project Management/Administration which will be used for unanticipated meetings and management of the work force. To arrive at the maximum work-hour limitation for this task, total all of the tasks in the Part other than this task and multiply that total by 5%. This task breaks down into 1.5% for unanticipated meetings and 3.5% for management of the work force. Both PennDOT's and the consultant's estimates need to identify all anticipated meetings with work-hours included in the appropriate tasks. Unanticipated meetings and management of the work force hours should not be included in both individual tasks and the Project Management/Administration task.

Normally, the 3.5% portion for the Project Management includes hours for Asta. Under *unusual* circumstances, Asta can be broken out in a separate task. If Asta is broken out, Project Management should be limited to 3.5%.

A miscellaneous task of 200 hours for unforeseen work that could arise during the final stages of project development is permitted. The task must be established using WBS Code 2.1.99, *Other Administrative Activities*, and must be established in its own part on Project Specific Agreements at the beginning of the project. The project manager will need to issue Notice to Proceed to the part when it is determined that the hours are needed to complete unforeseen work. Profit will not be given on this task.

If the consultant's work-hour estimate is substantially lower than PennDOT's estimate, PennDOT will closely evaluate the consultant's proposal to ensure that the consultant can provide the required work and services at the proposed cost. If it is determined that the consultant understands the SOW adequately, the lower work-hour total will be accepted. However, if there is a misunderstanding of the SOW both the Technical and Price Proposals should be revised accordingly.

Specific Rate of Compensation – The IO will establish work-hours in the SOW. There will be no allowance made for unanticipated meetings and management of the work force.

Lump Sum – Work-hour estimate should reflect the clearly defined task based on deliverables. In components that are not clearly definable, exclusions must be identified.

Cost per Unit of Work – Compare PennDOT and consultant work-hour estimate to ensure that there is not excessive work-hours.

3.6.3 – Overhead Rate

Introduction

The overhead cost represents those allowable costs that are not directly attributable to the project. Overhead costs generally include, but are not limited to, the following:

- Provisions for office, light, heat, and related items associated with the working space, depreciation allowances or rental for furniture, drafting equipment, and CADD equipment, automobile expenses, and office and drafting supplies not directly chargeable to the project;
- Taxes and insurance other than those included as salary cost, but excluding federal income taxes;
- Library and periodical expense, and other means of keeping current in the profession, such as attendance at technical and professional meetings;
- Those services and expenses essential to conduct business, including preliminary arrangements for new projects, executive, administrative, accounting, and legal salaries and expenses, other than identifiable salaries included in salary costs and expenses included in reimbursable non-salary expenses, plus salaries of partners and principals, to the extent that they perform general executive and administrative services as distinguished from technical or advisory services directly applicable to the project;
- Business development expenses, including salaries of principals and salary costs of employees so engaged; Provision for loss of productive time of technical employees between assignments and for time of principals and employees on public-interest assignments; and
- Payroll burden and fringe benefits, which include:
 - paid sick leave
 - vacation
 - holidays
 - payroll taxes
 - unemployment contributions
 - social security taxes
 - insurance benefits
 - retirement

The determination of the allowable cost items making up the consultant overhead/indirect costs shall be governed by provisions set forth in FAR Part 31.

The consultant overhead rate expressed as a percentage is calculated as follows:

$$\text{Overhead Rate (\%)} = \frac{\text{Allowable Overhead Costs}}{\text{Direct Labor Costs}} \times 100$$

The Indirect Payroll Cost is calculated by multiplying the direct labor cost by the overhead rate divided by 100.

Overhead Submissions

The consultant shall have a current approved FAR overhead rate(s) on file with PennDOT in order to perform work on PennDOT projects. Approved FAR overhead rate(s) are valid up to eighteen months from the consultant's audit fiscal year end. In order to obtain PennDOT approval of their overhead rate(s), consultants must submit in ECMS the following documentation to PennDOT :

- Cognizant approved indirect cost rate(s) if available (see Cognizant Audit below for requirements). If the consultant has received a cognizant letter, the only additional documentation required is the Contractor Cost Certification below. **OR**
- FHWA Order 4470.1A Appendix A – Contractor Cost Certification – See Publication 93 Appendix 3C
- Audit report disclosing the results of an indirect cost rate(s) FAR audit performed by an independent CPA in accordance with Generally Accepted government Auditing Standards. It is highly recommended that the CPA also utilize the guidance provided in the latest edition of the AASHTO Uniform Audit and Accounting Guide(UAAG) to perform the audit of the indirect cost rate(s). The FAR audit report shall be provided at no direct cost to PennDOT. The consultant may submit an unaudited FAR overhead rate(s) statement but will be limited to being a subconsultant on PennDOT projects with direct plus indirect costs for each subconsultant agreement limited to a maximum of \$250,000.
- A complete compensation analysis prepared in accordance with all criteria outlined in the AASHTO Uniform Audit and Accounting Guide Section 7.5 or the National Compensation Matrix (NCM) Executive Compensation Compliance Worksheet.
- AASHTO Internal Control Questionnaire (ICQ) and the following attachments:
 - Final fiscal year end trial balance that reconciles to the overhead schedule. If accounts on the overhead statement include multiple expense accounts, indicate which expense accounts on the trial balance make up the overhead statement account.
 - Overhead rate schedule showing the calculation of the overhead rate(s) and showing excluded unallowable amounts as per [FAR 31](#).
 - The Company's policies for vacation and sick leave.
 - The Company's bonus policy.

The UAAG, the updated ICQ and NCM are available at <https://transportation.org/audit/resources/eap-subcommittee-resources/>.

The rates should be calculated and rounded to the **third decimal place** when submitted in ECMS. Also, the proposed overhead rates on the Certification of Final Indirect Costs should match the proposed overhead rates submitted in ECMS, as well as the proposed overhead rates on the overhead statement.

Additional information may be requested by the PennDOT negotiator and shall be provided by the consultant in a timely manner.

Safe Harbor Overhead Rate

Consulting firms that provide engineering and design related services may choose to apply an office and/or field safe harbor overhead rate if they lack financial expertise to develop an overhead rate, lack financial resources to develop an indirect cost rate themselves or to hire a Certified Public Accountant (CPA) to develop an indirect cost rate for the firm, are a new or start-up firm that does not have contract-related cost history, or are a well-established firm that does not have previous experience with federally funded contracts. Appendix 3G contains the expected Safe Harbor time frame schedule. The maximum

office safe harbor overhead rate is 110%. The maximum field safe harbor overhead rate is 95%. To be eligible to use the office or field safe harbor overhead rate, a firm must not have had a FAR compliant overhead rate previously accepted by PennDOT or any other cognizant agency. A Consultant requesting approval for use of an office and/or field safe harbor overhead rate must certify (Appendix 3H) that it will stand by the office and/or field safe harbor overhead rate for the duration of affected agreements and will not expect additional reimbursement for amounts above the requested office and/or field safe harbor overhead rate based on any future audits. Documents listed in the Overhead Submission section of this publication are required according to the Appendix 3G "Compliance Components" schedule. Safe harbor office and/or field overhead rate submissions must be made, reviewed and approved through ECMS and approvals are valid up to eighteen months from the consultant's fiscal year end.

Field Pro-Forma Overhead Rate

If the consultant that has previously had an **office** FAR compliant overhead rate accepted by PennDOT or other cognizant agency and is unable to generate a FAR **field** Overhead Rate because the firm has not done construction inspection or other work requiring a field overhead rate for the previous fiscal year, the consultant shall generate a field Pro-Forma Overhead Rate based on the best available accounting information. This field Pro-Forma Overhead Rate will be used as a provisional rate in the consultant's price proposal. The field Pro-Forma overhead rate is limited to 95%. Pro-Forma field rates differ from Safe Harbor fields overhead rates in that firms applying for the Pro-Forma field overhead rate have already had a FAR Office overhead rate accepted and are new to construction inspection type work, requiring a field rate.

Cognizant Audit

PennDOT will accept indirect cost rates deemed by a cognizant agency, to be established in accordance with the FAR cost principles. This determination may be made through an audit performed by the cognizant agency or through their concurrence with an audit performed by a CPA firm. A cognizant agency may be any of the following: (1) Federal agency; (2) The Home State DOT (the State where the consulting firm's accounting and financial records are located); or (3) A Non-Home State DOT to whom the Home State has transferred cognizance in writing for the particular indirect cost rate audit of a consulting firm.

PennDOT requires a letter from the cognizant agency establishing the accepted "cognizant indirect cost rate(s)". A cognizant indirect cost rate(s) submission must include the Contractor Cost Certification of Final Indirect Costs form. This form is available at the ECMS website overhead information link and in Publication 93 Appendix 3C.

Method of Payment

Depending on the method of payment for a Consultant Agreement Part or Work Order, overhead costs are evaluated accordingly:

Cost Plus Fixed Fee - The consultant will use its current, approved overhead rate to develop its Price Proposal to establish a budget and for invoicing. Overhead Adjustment invoices will be used to pay the consultant its actual overhead for the life of the Consultant Agreement. Section 4.6.4 provides additional information regarding Overhead Adjustment Invoicing.

Specific Rate of Compensation - The consultant will use its current, approved overhead rate to develop its Price Proposal to establish a budget. The Specific Rate Factor developed at the time of execution of the Legal Agreement will be used for Supplements and invoicing for the life of the Consultant Agreement, unless a new Part is introduced.

Specific Rate of Compensation – Construction Inspection - The consultant will use its current, approved, field overhead rate to develop its Price Proposal to establish a budget. The Specific Rate Factor developed at the time of execution of the Legal Agreement will be used for Supplements and invoicing for the life of the Consultant Agreement.

Lump Sum - The consultant will use its current, approved overhead rate to develop its Price Proposal to establish a budget. If a Supplement is needed, the same method will be used during the processing of the Supplement.

Cost Per Unit of Work - The consultant will use its current, approved overhead rate to develop its Price Proposal to establish the Unit Costs and budget. If a Supplement needs to be processed to establish new Units of Work, the latest overhead information should be used to establish the costs.

Office Overhead Rates

Design and Miscellaneous & Construction Management Agreements – The use of an office overhead rate is allowed for all employees whom the consulting firm supplies a full time workstation within the consulting firm's operations.

A prime consultant is required to have an audited FAR overhead rate on file with PennDOT prior to submitting a price proposal using Lump Sum, Cost per Unit of Work, or Specific Rate of Compensation methods of payment. The consultant may use an internally prepared FAR overhead rate, accepted by PennDOT, for price proposal preparation for an agreement using a Cost Plus Fixed Fee method of payment, but an audited FAR overhead rate must be on file with PennDOT prior to submitting an invoice under the agreement.

For an agreement where the estimated direct plus indirect payroll cost for the subconsultant is more than \$250,000, a subconsultant is required to have an audited FAR overhead rate on file with PennDOT prior to submitting a price proposal using Lump Sum, Cost per Unit of Work, or Specific Rate of Compensation methods of payment. The subconsultant may use an internally prepared FAR overhead rate, accepted by PennDOT, for price proposal preparation for an agreement using a Cost Plus Fixed Fee method of payment, but an audited FAR overhead rate must be on file with PennDOT prior to submitting an invoice under the agreement.

For an agreement with an estimated direct plus indirect payroll cost for the subconsultant is less than \$250,000, a subconsultant may use an internally prepared FAR overhead rate, accepted by PennDOT. The internally prepared overhead rate must be accepted by PennDOT prior to price proposal preparation. A subconsultant may submit an audited FAR overhead rate if one is available.

Field Overhead Rates

Construction Inspection Agreements - A prime consultant is required to have an audited FAR field overhead rate on file with PennDOT prior to submitting a SOI.

For an agreement where the estimated direct plus indirect payroll cost for the subconsultant is more than \$250,000, a subconsultant is required to have an audited FAR field overhead rate on file with PennDOT prior to being included as a subconsultant in an SOI.

For an agreement with an estimated direct plus indirect payroll cost for the subconsultant is less than \$250,000, a subconsultant may use an internally prepared FAR field overhead rate, accepted by PennDOT. The internally prepared field FAR overhead rate must be accepted by PennDOT prior to the subconsultant being included in an SOI. A subconsultant may submit an audited FAR field overhead rate if one is available.

Design and Miscellaneous and Construction Management Agreements – The use of a field overhead rate is required for consultant employees who are not supplied a full time workstation within the consulting firm's operations.

In situations, where a field rate will be required but the consulting firm does not have an approved field rate, PennDOT and PennDOT Audits Division may approve a provisional field overhead rate.

Voluntary Lower Overhead Rates – A Consultant requesting approval for use of an overhead rate lower than the overhead rate it submitted as FAR compliant (audited or unaudited) must agree that it will stand by the lower overhead rate for the duration of affected agreements and will not expect additional

reimbursement for amounts above the requested lower rate based on any future audits of the rate. Additionally, the consultant requesting approval for a lower overhead rate must provide as part of its overhead submission a certification that it will stand by the requested lower rate for the duration of agreements affected by the rate, a narrative explaining why it is requesting a lower overhead rate, and an identification of the specific costs that are being voluntarily reduced to arrive at the lower overhead rate.

3.6.4 – Fixed Fee or Profit

Any new agreements or supplements executed after June 22, 2016 must follow the following profit percentage limit:

Fixed fee or profit will be limited to 15 percent. Fixed fees or profit in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist. Consultants with a profit factor greater than 15 percent must submit to the CMD Chief written justification during the negotiation process prior to receiving price proposal approval.

The allowable lump sum for fixed fee or profit is primarily based on the degree of responsibility to be assumed by the consultant and a firm's audited FAR Overhead Rate in relation to the market values. Other considerations that may enter into the negotiation include:

- financial and professional investments to be required of the consultant;
- the record of the consultant in performance of this type of work and services;
- the extent, Scope of Work, complexity, character, date of beginning and duration of work and services;
- the degree of responsibility to be assumed by the consultant;
- the consultant's normally expected return for such work and services;
- the conditions under which they are expected to be performed; and
- other factors as contemplated at the time of submission of the proposal.
- Profit percentages for consultants using the Safe Harbor Overhead Rate will be determined at the discretion of the CMD Chief.

Additional limitations to fixed fee or profit may be addressed by an IO's Operating Procedures.

In October of each year, the Contract Management Division will determine the mean and distribution of consultant office and field Overhead Rates, weighted by payouts. This will establish the market value for Overhead Rates and profit. Profit is incentivized such that the lower the Overhead Rate, the greater the Profit Factor. Separate analyses will be performed for office and field overhead rates. Profit is applied to both Direct Labor (DL) and Overhead (OH), and the profit amount is calculated as follows:

$$\text{Total Profit} = ((\text{DL} + (\text{Overhead Rate} \times \text{DL})) \times \text{Profit factor})$$

Overhead Rates, as described in Section 3.6.3, shall be governed by provisions set forth in FAR Part 31 and are based on a FAR Audit. A consultant's Profit Factors will not be adjusted during the course of the year, even if a different Overhead Rate is determined or submitted.

Appendix 4B provides guidance for including fee in a supplement. If it is necessary to include fee in a supplement to an existing agreement with a Cost Plus Fixed Fee Method of Payment, the Profit Factors defined for the consultant, for the current year, will be used for the supplement.

Graphical representations of how overhead rates affect profit factors are provided on Figures 3.1 and 3.2. The lines defining profit class (profit classes A,B,C,D, and E are shown in Chart 3.3) establish the following profit at the market-wide Overhead Rate average:

- (A) 12%
- (B) 10%
- (C) 9%
- (D) 8%
- (E) 10%

Chart 3.3 defines which line applies to each service. Each firm's Profit Factors will be calculated based on its audited FAR Overhead Rates (not the average). In order to achieve accuracy, formulas used to develop the curves will be applied, rather than interpolating from the curves.

Chart 3.3 - MAXIMUM ALLOWABLE FEE				
Service Provided	Profit added on Direct and Indirect Payroll			Specific Rate
	Cost Plus Fixed	Lump Sum	Cost per Unit of work	
Final Design Work and Services for PS&E submissions	(B)	(A)	---	---
Shop Drawing Review, Consultation During Construction	---	---	---	(B)
Preliminary Engineering & Environmental Work and Services	(C)	---	---	---
Conceptual Design for Design-build Project	(C)	---	---	---
Field Surveys only	(C)	(B)	(B)	---
Studies (Feasibility, traffic, etc.)	(D)	---	---	---
Bridge Inspection/Analysis	(B)	(A)	(A)	---
Right-of-Way Acquisitions/ Negotiation	(C)	---	---	---
Photogrammetric Work	---	(B)	---	---
Repetitive Work & Services	---	---	(B)	---
Utility Designation And Locating	---	---	(C)	---
Environmental Studies	---	---	---	(C)
Geotechnical Studies	---	---	---	(B)
Review Activities**	(C)	---	---	(C)
Highway Occupancy Permit Review	---	---	---	(C)
Highway Occupancy Permit Inspection	---	---	---	(E)
Construction Inspection	---	---	---	(E)
Construction Consultant Management Project Manager	---	---	---	(B)
* Design Consultant Management Project Manager	(C)	---	---	(B)

* Design Consultant Management Project Manager should be used as indicated in [Section 2.2.3](#).

** For activities under Cost Plus Fixed Fee Method of Payment that function like a Specific Rate of Compensation, refer to [Section 4.5.3](#).

If circumstances allow combining phases of work and services under the same Consultant Agreement Part, the fixed fee should be weighted in proportion to the direct payroll for individual tasks that can be positively identified with the distinct phases.

For a Specific Rate Open End Agreement, an average profit factor can be used for the type of work anticipated in the Open End.

Figure 3.1 – Office Overhead Rate Distribution & Profit

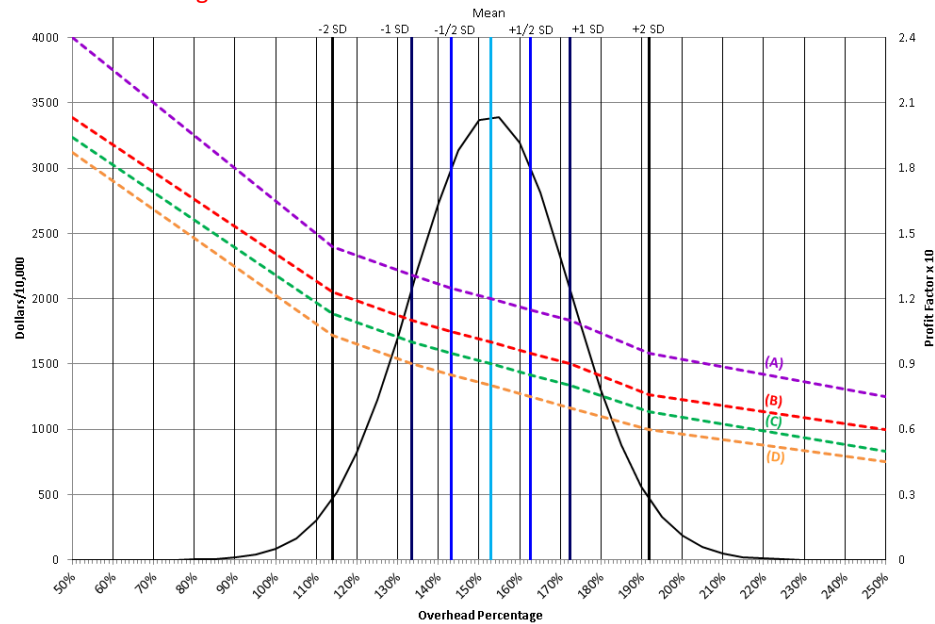
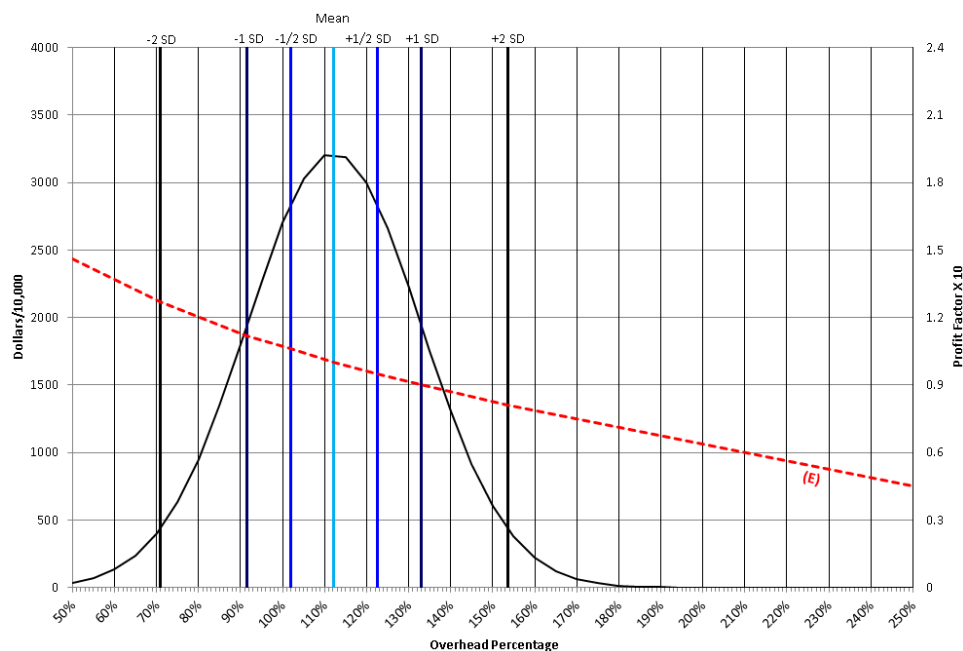


Figure 3.2 – Field Overhead Rate Distribution & Profit



3.6.5 – Escalation

Agreements allow an increase for escalation of consultant salaries due to cost of living increases for the life of the agreement. PennDOT policy limits this escalation to 3% per year for the life of the agreement.

Escalation Rate Approval

If a consultant can justify a higher rate based on historical data, PennDOT will consider exceptions to this policy when acceptable written justification is provided to CMD. Historical employee data for the current and previous two years should be provided. The justification should include all employees that can reasonably be expected to appear in price proposals or invoices for the next year, and who were employed

for each of the three years included in the submission. The calculations should not include employee increases resulting from promotions or performance-based raises. This policy is not intended to discourage performance-based pay raises. The intention is to capture salary increases due to cost of living increases. Submissions should include the date in which the firm issues salary increases. Submissions are to be made to CMD in Excel spreadsheet format. An example of an escalation submission is:

Name (position #)	Classification	Hourly Rate for 2 years prior	Hourly Rate for prior year		Hourly Rate for prior year	Current Hourly Rate
Employee #1	Project Engineer	\$ xx.xx	\$ xx.xx		\$ xx.xx	\$ xx.xx
Employee #2	Senior Engineer III	\$ xx.xx	\$ xx.xx		\$ xx.xx	\$ xx.xx
Employee #3	Senior Engineer II	\$ xx.xx	\$ xx.xx		\$ xx.xx	\$ xx.xx
Employee #4	Clerical	\$ xx.xx	\$ xx.xx		\$ xx.xx	\$ xx.xx
Employee #5	CADD Operator	\$ xx.xx	\$ xx.xx		\$ xx.xx	\$ xx.xx
Employee #6	Designer	\$ xx.xx	\$ xx.xx		\$ xx.xx	\$ xx.xx
Total Hourly Rate		\$ xxx.xx	\$ xxx.xx		\$ xxx.xx	\$ xxx.xx
% Increase		x.xx%			x.xx%	
Average of last two Escalations		X.XX%				

The CMD will issue approval and retain these acceptable justifications on file for future reference. Approval for a higher escalation rate will be in effect for one year from approval date. Consultants are responsible for submission of a new escalation request three weeks prior to this expiration date. Failure to do so may cause their escalation rate to revert back to the limit of 3% until higher escalation rates can be approved.

A spreadsheet listing the consultants with current approvals for higher escalation rates is located on the shared drive at [P:\penndot_shared\Bureau of Design\Design Services Division\Consultant Agreement Section\Consultant Escalation Rates, Approved.xlsx](#).

Project Escalation Rate

When calculating the escalation rate to be used for a project, no escalation should be included for the time period between the price proposal submission date and the date the consultant firm gives their annual raises.

For ease of calculating escalation for a firm that gives annual salary increases on the employee's anniversary, an assumption can be made that an annual salary increase at six months following the price proposal submission would be the same as annual salary increases on the employee's anniversary date.

PennDOT does not have a standard method of calculating a project escalation rate. The following are examples of the preferable method:

Example 1 – *Part 1 duration 18 mo. from NTP 11/1/20xx*
Annual Increase of 3% on 1/1/20xx
2 mo. @ 100% = 2
12 mo. @ 103% = 12.36
4 mo. @ 106.09% = 4.2436
=18.6036/18 = 3.35%

Example 2 – *part 2 duration 18 mo. NTP 10/1/20xx*
Annual Increase of 3.595% on employee anniversary.
Escalation rate approved by PennDOT on mm/dd/yyyy
Rates in proposal dated 9/1/20xx.
5 mo. @ 100% = 5
12 mo. @ 103.6% = 12.432
1 mo. @ 107.33% = 1.0733
=18.5053/18 = 2.81%

Consultants should enter the method that they chose to use in ECMS, including the anticipated NTP date, duration, approved escalation rate, and date in which employees are granted increases. The duration for calculating the escalation should correspond with the duration in the technical proposal. The duration for subconsultants should be the same as the prime's duration.

Construction Inspection Escalation

Escalation for construction inspection wage rates will adhere to established PennDOT policy and applicable Consultant Agreement language.

3.6.6 – Direct Costs Other than Payroll

Invoicing for Direct Cost must be for actual costs. Receipts must be kept for invoiced direct costs.

Subsistence

When PennDOT finds it appropriate to reimburse for travel, lodging and subsistence, a provision allowing such reimbursement must be included in the Agreement. PennDOT will not allow any charges for travel, lodging or subsistence in excess of the maximum state rates set forth in current Commonwealth Management Directive 230.10, "Commonwealth Travel Policy" promulgated by the Governor's Office, Commonwealth of Pennsylvania. The consultant shall be governed by the regulations as defined by this Directive.

The consultant's out of pocket expenses for lodging and meals shall be charged at actual costs, not to exceed those authorized by the Commonwealth Management Directive 230.10.

Regardless of the amount submitted in the Price Proposal, consultants are responsible to use the current rate as indicated in the Commonwealth Management Directive when invoicing.

Reimbursement for subsistence is not allowed for Construction Inspection.

Equipment

The consultant should own most of the equipment required to provide the work and services. The cost of this equipment should be included in the consultant's overhead rate.

Costs for specialized equipment should be billed at the actual cost incurred by the consultant. Equipment should be considered "specialized" if it cannot be considered standard equipment for that particular consultant's normal operating business needs.

Direct Costs

When evaluating Direct Costs Other Than Payroll, consideration should be given to minimize these costs. In order to avoid encumbering an excessive amount of funding, the IO Project Manager needs to ensure that excessive amounts are not included in the Price Proposal. For example, the number of units (days, miles, copies, etc.) needs to be a reasonable amount. Also, comparisons of proposed/invoiced unit costs to other similar costs need to be made on a regular basis.

The consultant will not receive any mark-up on in-house direct costs.

The Direct Costs Other Than Payroll Costs to be provided by the consultant are to be identified as being directly charged to the Agreement and not to an account which is included in the consultant's overhead percentage. The Direct Cost items are to be documented by estimates of quantities and costs in justification of the amounts proposed.

Design Agreements

All allowable direct costs should be charged directly to the project. However, FAR Part 31.202 allows "*For reasons of practicality, the contractor may treat any direct costs of a minor dollar amount as an indirect cost if the accounting treatment –*

- (1) is consistently applied to all final cost objectives; and
 (2) produces substantially the same results as treating the cost as a direct cost

Therefore, as incidental costs may be onerous to deal with as Direct Costs, most consultants or subconsultants include them in overhead cost pools. The following examples of such costs should not be considered all-inclusive:

- Telephone calls – both local and long distance
- Copies
- Postage and or courier
- Company owned vehicles
- Disposable items (wood survey stakes, protective gear, etc.)
- Survey supplies
- Cellular phones
- Training
- Office supplies/equipment
- Licenses

Direct Costs for Deliverables

Certain Direct Costs are allowed for deliverables on Design Agreements. Estimated costs should be included in the price proposal. Maximum Direct Costs allowed for typical deliverables are represented in Chart 3.4 – Maximum Costs Allowed for Direct Costs.

Chart 3.4 – MAXIMUM COSTS ALLOWED FOR TYPICAL DIRECT COSTS				
Item			Max. Amount Allowed	Comment
Copies	8 1/2" x 11"	b & w	\$ 0.10	
		color	\$ 0.60	
	11" x 17"	b & w	\$ 0.20	
		color	\$ 1.00	
Paper Prints	Full size		\$ 0.60	
	Half size		\$ 0.50	
Vellums	Full size		\$ 3.00	
Mylars	Full size		\$ 5.00	
Photography	per roll (includes film development)	24 exposures	\$ 15.00	Allowed for historical and cultural purposes only
		36 exposures	\$ 25.00	
		5 x 7 print	\$ 1.50	
Presentation Boards	panel		\$ 25.00	cost for the boards only - no graphics, mapping, text, etc.
	bi-fold		\$ 50.00	
CD-ROMs			\$ 0.35	Distribution of documents/ plans to public or environmental resource agencies ONLY
DVDs			\$ 0.65	
Jewel cases/ CD/ DVD (hard Plastic)			\$ 0.35	

Construction Inspection

Other Direct Costs for Construction Inspection agreements are shown in detail within the Standard Scope of Work 3.4.1 Section II.B.

3.6.7 – Direct Costs of Services and Work by Others

This element encompasses the actual costs associated with subconsultants and Non-Professional Contractual Services whether obtained by negotiations or by bidding. Even though subconsultant costs are considered a direct cost with respect to the Prime's agreement, each subconsultant agreement has its own budget of funds per Category of Compensation and shall be managed in accordance with all procedures detailed in Publication 93 and terms and conditions indicated in Publication 442.

The consultant will not receive any mark-up on these direct costs.

Non-Professional Services

Non-professional services are Direct Costs Other Than Payroll identified as Predetermined Amounts (PDA's). These include items such as core borings, traffic control, ROW field office, and rigging. If PennDOT's Estimate for a non-professional service is less than \$10,000, the service can be obtained by accepting the lowest of a minimum of three written quotes or documented telephone quotes to justify a choice of Contractor. If PennDOT's Estimate exceeds or equals \$10,000, the work and services must be bid out. Advertisements for these work and services need to appear in at least two newspapers, of wide local circulation, for one advertisement cycle.

If PennDOT's estimate for subsurface drilling during preliminary engineering is greater than \$45,000, the work and services must be bid out.

The selection of the Contractor to provide non-professional services must be approved by the IO Project Manager. Documentation of the bid results or price quotes must be retained in the project file.

If laboratory testing services for geotechnical investigations, structure testing, etc. are being considered, they will be categorized as Non-professional Services. The consultant will include a schedule of prices per test in the price proposal. This testing may be provided by either the administering consultant that has a laboratory certified by the AASHTO Materials Reference Laboratory (AMRL), or another AMRL-certified laboratory. Test results must be reviewed and attested by a Professional Engineer, registered as such in Pennsylvania. The IO will need to determine that the prices proposed are fair and reasonable for the particular tests contemplated. As testing is recommended by the consultant the IO will consider and approve proposed tests.

3.6.8 - Total Budget Amount per Method of Payment per Categories

Cost Plus Fixed Fee is made up of three (3) or four (4) categories (Labor Amount + Profit Amount + Direct Costs Other Than Payroll)

Where Labor is equal to Direct and Indirect Costs and Escalation (if necessary), Profit is calculated on Direct and Indirect Costs and Direct Costs Other Than Payroll is all other costs. Note: Direct Costs Other Than Payroll may be broken down into two separate categories - Other Costs or PDAs (Pre-Determined Amounts).

Labor Category = $DL + (OH \times DL) + \text{Escalation} [\text{escalation percentage} \times ((DL + (OH \times DL)))]$ (if applicable) plus

Profit Category = $((DL + (OH \times DL)) \times \text{Profit factor})$ plus

Direct Costs Other Than Payroll Category: (normal and/or PDA amounts)

Work is invoiced per hour with the profit paid based on the percentage of work completed.

Specific Rate of Compensation is made up of two (2) or sometimes three (3) categories (Labor Amount including Profit and Direct Costs Other Than Payroll).

Where Labor is equal to Direct and Indirect Costs including the Profit on both Direct and Indirect Labor and Escalation (if necessary), and Direct Costs Other Than Payroll is all other costs. Note: Direct Costs Other Than Payroll may be broken down into two separate categories - Other Costs or PDAs (Pre-Determined Amounts).

Labor Category = $DL + (OH \times DL) + Escalation [escalation\ percentage \times ((DL + (OH \times DL)))]$ (if applicable) + Profit $((DL + (OH \times DL)) \times Profit\ factor)$ plus

Direct Costs Other Than Payroll Category: (normal and/or PDA amounts)

Work is invoiced per hour times a SRF (Specific Rate Factor) that includes profit.

Lump Sum is made up of two (2) or sometimes three (3) categories (Labor Amount including Profit and Direct Costs Other Than Payroll).

Where Labor is equal to Direct and Indirect Costs including the Profit on both Direct and Indirect Labor and Escalation (if necessary), and Direct Costs Other Than Payroll is all other costs. Note: Direct Costs Other Than Payroll may be broken down into two separate categories - Other Costs or PDAs (Pre-Determined Amounts).

Labor Category = $DL + (OH \times DL) + Escalation [escalation\ percentage \times ((DL + (OH \times DL)))]$ (if applicable) + Profit $((DL + (OH \times DL)) \times Profit\ factor)$ plus

Direct Costs Other Than Payroll Category: (normal and/or PDA amounts)

Work is invoiced based on the percentage of work completed for both labor and profit.

Cost Per Unit of Work is made up of two categories (Cost per Unit of Work and Non-Unit Related Other Costs)

The Cost per Unit of Work includes the labor, overhead, profit and escalation for each unit of work plus Non-Unit Related Other Costs.

Work is invoiced per unit of work along with other costs as needed.

3.6.9 – Review for DBE Goal Compliance

The highest ranked consulting team's price proposals will be reviewed by the consultant, IO and the CMD for compliance with the advertised DBE goal.

If the DBE goal is not met for an agreement, supplement, or work order, and the IO is planning future supplements or work orders, these may give the consultant additional opportunity to meet the goal.

The prime consultant is responsible for initiating an Appendix 3D DBE Monitoring Form, for each Project Specific Agreement, Work Order, or Supplement when the DBE Goal is not met for the entire Agreement, and submitting this form, along with a written statement addressing the circumstances that relate to the DBE goal not being met. This Form should be submitted to the IO Project Manager by the Price Proposal due date. If the consultant does not appear to be acting in Good Faith, the IO should forward this form to the CMD Chief to initiate the [Section 5.4.5](#) Good Faith Effort Process.

Failure of the highest ranked consulting team to meet the DBE goal,

- At the Agreement stage - May result in agreement review breaking down, and the next highest ranked consulting team being assigned the agreement.
- At Supplement or Work Order stage - May result in cancellation of the agreement.

3.6.10 – Project Schedule

The IO Project Manager and the consultant should agree upon a timeframe for the completion of the agreement parts to ensure that the project is completed within the required timeframe. The consultant should enter these approved timeframes in the Technical Proposal.

The progress of the services and work under each Part or Work Order should be monitored to insure that the services and work are completed within the agreed upon time period for that Part or Work Order.

The consultant shall not be eligible for and shall not request reimbursement from PennDOT for any costs incurred under an Agreement Part after the expiration of that Part or Work Order. See [Section 5.6](#) for additional information concerning this.

The maximum time length of a Non Project Specific Open End Agreement is five years.

If additional time is needed on a federal-aid, CPM agreement, prior approval from the FHWA is required prior to processing a time extension.

Project Specific Agreement Part Extension - The time of completion for a Part may be extended by the execution of a Supplemental Agreement or by a letter signed by the Deputy Secretary for Highway Administration, or authorized designee.

At least four weeks prior to the termination of the Agreement Part, the consultant must initiate a time extension request in the form of a letter, to PennDOT's Manager of the Agreement, providing justification for the time extension prior to the termination date of the Part. This request should also include reasoning as to why the work and services cannot be completed within the previously agreed-to timeframe.

An authorized PennDOT Representative shall submit a transmittal letter and a copy of the consultant's time extension request to the CMD, for approval by the Deputy Secretary for Highway Administration, a minimum three weeks prior to the termination date of the Agreement Part.

If justified, the Deputy Secretary for Highway Administration, or authorized designee, will issue a time extension approval letter prior to the expiration date of the Agreement Part. A copy of the time extension approval letter shall be forwarded to the IO Project Manager and the Office of the Comptroller at *Contracts - Grants & Non-PO Section, Comptroller Operations, 9th floor - Forum Place*.

If allowed by the Consultant Agreement a letter is used to extend the time of completion. The date of PennDOT's approval letter is the effective date of the time extension and needs to occur prior to the expiration of the Part or Work Order - without exception.

Open End Work Orders Extension - A letter, from an authorized PennDOT Representative, may extend the time of completion for a Work Order under an Open End Agreement.

The consultant must initiate a request for the time extension as indicated above. An authorized PennDOT Representative must issue the time extension approval letter back to the consultant prior to the termination date of the Work Order and any time extension must end within the Agreement time period.

Individual copies of the time extension approval letter must be forwarded by the IO Project Manager to the Contract Management Division, Bureau of Design and Delivery and the Office of the Comptroller at *Contracts - Grants & Non-PO Section, Comptroller Operations, 9th floor - Forum Place*, within one week of the date of the time extension.

Open End Agreement Extension - On a limited basis the expiration date for Non-Project Specific and Project Specific Open End Agreement may be extended. These approvals will be completed through the CMD.

At least seven weeks prior to the expiration of the Agreement, the consultant must initiate a time extension request in the form of a letter, to the PennDOT Manager of the Agreement, providing justification for the time extension prior to the expiration date.

An authorized PennDOT Representative shall submit a transmittal letter and a copy of the consultant's time extension request to the CMD for approval by the Deputy Secretary for Highway Administration or designee, a minimum of six weeks prior to the termination date.

When approved, an Open End – Time Extension Supplement will be processed in ECMS, as indicated in [Section 4.4.3](#). For non-project specific open end agreements, no additional funds beyond the current Open End Agreement will be allowed.

3.7 – Agreement Negotiation

3.7.1 – Introduction

PennDOT and the consultant community have entered into a partnership to utilize a new methodology for negotiating consultant agreements. The new process is called Mutual Gains Negotiations and some benefits include: significant reduction in negotiation project delivery, statewide consistency in negotiations, and the mutual understanding of expectations regarding scope, deliverables, range of hours and project complexity. As its name implies, this approach increases the chances of arriving at a fair and reasonable price for professional services for both the consultant and the Department. An executive summary, an introduction to Mutual Gains Negotiations, and an introduction to the staff hour Estimating Guide can be found in Appendix 3E.

Mutual Gains Negotiations is a collaborative approach to negotiating contracts. Rather than the adversarial approach (win-lose), the mutual gains process involves a consensus-building, win-win approach. In order for Mutual Gains Negotiations to be successful, the parties need to have a shared understanding of the project scope and complexity, agree to the goal of a mutually beneficial solution, and the parties must trust one another.

Mutual Gains Negotiations are based upon the following five principles:

- 1.3 Identify Interests
- 1.4 Consider all Options
- 1.5 Develop Standards or Criteria
- 1.6 Understand Your Alternatives
- 1.7 Build Relationships

3.7.2 - Scope Clarification Meetings

The first step in contract preparations is to clearly understand the level of complexity and the expectations with regard to plan preparation and deliverables. Although a standard scope of services may be outlined through the Work Breakdown Structure (WBS) codes, some aspects of the scope may be negotiable. Both Project Managers (Department and Consultant) must understand the scope and be prepared to clarify it as necessary in negotiations. A scoping meeting with all necessary technical experts will be held and all parties will mutually agree to the scope. In some cases, a field visit with key PennDOT and consultant staff prior to beginning negotiations may prove beneficial for complex projects. Scope Clarification meetings/discussions are central to effective negotiations and are to be considered a routine part of negotiations.

After the scope is agreed to, the price proposal will be prepared using the Staff Hour Estimating Guide as a starting point. For 80 percent of the projects, the hours for each task should fall within the accepted range as per the Guide. The Guide can be found in the ECMS References/ File Cabinet link.

3.7.3 - Staff Hour Estimating Guide

The Staff Hour Estimating Guide is intended to provide uniform hour estimates for professional services contracts statewide. PennDOT and Consultant Project Managers will use the detailed descriptions of the work tasks covered in the Work Breakdown Structure together with the range of staff hours required to negotiate every project task that is covered in the Staff Hour Estimating Guide. This, in addition to full and consistent project scoping, will allow contracts to be negotiated in a uniform manner throughout the Commonwealth.

3.7.4 – Negotiation Meetings

Negotiation meetings will convene at the IO Office when feasible. The IO staff from pertinent units, particularly the individuals who helped develop the SOW and PennDOT Estimate, and key staff from the selected consultant will attend. If comments are of a minor nature, the Negotiation Engineer may elect to negotiate by telephone with the consultant. The Negotiation Engineer should ask the consultant to document conclusions reached, whether negotiations were made in a meeting or by phone. If resulting revisions are minor, the Negotiation Engineer may make agreed upon changes in ECMS. Otherwise, the Price Proposal will be returned to the Consulting team for revision.

If agreement with the highest-ranked consultant cannot be reached, the Negotiation Engineer will formally terminate the negotiations. A Scope Clarification Meeting will then be held with the next highest ranked consultant and procedures to create an agreement with this firm will be commenced. If negotiations are unsuccessful with all ranked firms, the IO must readvertise the Agreement or abandon the effort.

3.7.5 – Training

Training on Mutual Gains Negotiations and on the use of the Staff Hour Estimating Guide is available in the ECMS References/File Cabinet link.

3.7.6 – Negotiation Responsibility

The authority to negotiate agreements is delegated as follows: the Certified District Negotiators have the authority to negotiate agreements and supplements less than \$3,000,000, and the CO Negotiation Engineers have the authority to negotiate agreements and supplements less than \$6,000,000,. Any agreement or supplement equal to or greater than \$6,000,000 is required to be negotiated by the CMD Chief.

Negotiation Authority	Overall Agreement Estimate
Certified District Negotiators	< \$ 3,000,000
CO Negotiation Engineers	< \$ 6,000,000
CMD Chief	≥ \$ 6,000,000

For agreements and supplements of \$6,000,000 or greater, negotiation authority may be delegated by the CMD Chief or BODD Director to CO Negotiation Engineers established via a delegate memo assigning negotiation authority to a specific Negotiation Engineer. See Appendix 3F Negotiation Engineer Delegation Sample Memo.

Negotiation authority will be delegated to the District individuals who meet all of the following certification criteria:

- Be recommended by the District Executive.
- Hold a Professional Engineering License and be willing and able to take the responsibility for negotiating Engineering Agreements and Supplements.
- Attend a hands-on negotiation session administered by the BODD Director, CMD Chief or designee, or obtain hands-on negotiation experience with guidance and assistance from a CMD Negotiation Engineer.

Publication 93 (02-25)

- Successfully complete the negotiation-training course offered by the CMD.
- Successfully complete the Mutual Gains Training Outline found in the ECMS References/File Cabinet link.

All five requirements must be met prior to the individual becoming a certified District Negotiator and receiving delegation of negotiation responsibilities.

Once an individual is delegated negotiation responsibilities, they will have the authority to approve the cost and level of effort up to \$ 3,000,000 for the services procured through the consultant. Coordination will still be required with the impacted District Units.

Once an agreement has been negotiated, the CMD will prepare the Agreement and process it for execution.

The CMD will conduct QA reviews of these negotiations and meet with the Certified District Negotiator, if necessary, to discuss the experience and/or effectiveness of the negotiation. A Certified District Negotiator may have the authorized delegation of agreement amount raised, reduced, or rescinded based on the results of QA reviews.

Chapter 4 – Administration of Consultant Agreement Process

4.1 – Introduction

The Agreement will need to be managed to ensure that PennDOT receives the work and services and the consultant receives payment as outlined in the contract. This responsibility is the duty of the IO Project Manager. This chapter outlines some of these responsibilities.

4.1.1 – PennDOT Conflict of Interest

All PennDOT employees shall adhere to the Governor's Code of Conduct, Executive Order 1980-18 and the Public Official and Employees Ethics Act, 65 Pa. C.S. 1101-1113. Additionally, all PennDOT employees shall adhere to 2 CFR 200.112, 23 CFR 1.33 and 23 CFR 172 regarding conflicts of interest. PennDOT shall promptly disclose in writing any potential conflict of interest to FHWA.

4.2 – Responsibilities of the IO Project Manager

Note: *The duties of the IO Project Manager referred to in this section do not negate any legal responsibility of the consultant Project Manager. Ultimately, full responsibility falls on the consultant to complete the work and services as indicated in the contractual agreement.*

The IO Project Manager performs the key role in managing the Consultant Agreement and monitoring the consultant's performance. The IO Project Manager is responsible for maintaining technical and administrative control of both the project and the consultant.

These responsibilities include:

- Review Terms, Conditions and Provisions which are incorporated into the Agreement by reference. These Terms, Conditions and Provisions are linked to the electronic agreement, and includes such requirements as:
 - Commonwealth Contractor Responsibility Provisions
 - Consultant Integrity Provisions
 - Commonwealth Nondiscrimination Clause
 - Federal Nondiscrimination and Equal Employment Opportunity Clauses
 - Offset Provision for Commonwealth Contracts
 - Pennsylvania Election Code
 - Publication 442, Bureau of Design and Delivery Specifications for consultant Agreements
 - Provisions Concerning the Americans With Disabilities Act
 - Department's Standard Agreement Special Requirements
 - Method of Payment
- Agreement Requirements
 - Verify contractual DBE Goals are met. When processing work orders and supplements, ensure that DBE goals are attained. See [Section 5.4](#) when issues concerning DBE goal attainment arise.
 - Review and evaluate the work and services included in contract performed by the consultant.
- Consultant Personnel
 - Review the qualification of replacement personnel if the consultant requests a substitution for key personnel. Ensure that the substitute is sufficiently qualified to assume the position, and ensure that the integrity of the team is not compromised. See [Section 4.3](#) for Construction Inspection substitution process.
 - Compare the consultant's personnel charged to the Consultant Agreements with those who are actually working on the agreement.

- Work and Services
 - Ensure that work and services are in accordance with PennDOT manuals, procedures, policies, and standards.
 - Process project and Consultant Agreement submissions in a timely manner.
 - Accept and evaluate the quality of deliverables.
 - Measure the work and services performed against the SOW statement.
 - Verify adherence by the consultant to their stated QA/QC assurance plan.
- Communications with Consultant and PennDOT
 - Provide assistance and guidance to the consultant.
 - Meet with the consultant to agree on a schedule that will allow for the completion of major work tasks to ensure that the project is completed within the required timeframe. Review this schedule frequently to ensure that the project stays on schedule.
 - If performance does not meet Agreement requirements, identify deficiencies and advise appropriate authorities so remedial action can be taken before payments are made.
 - Coordinate any appropriate supplements.
 - Prepare a final evaluation of the consultant's performance. See [Section 4.6.7](#).
- Responsibilities to PennDOT
 - Administrative duties concerning the procurement and inventory of equipment supplied to the consultant.
 - Alert appropriate authorities to any problems that may have a negative effect on the project.
 - In the event of a design error, follow the procedure outlined in [Section 5.7](#).
 - Immediately alert and obtain guidance from PennDOT officials if consultant is not performing satisfactorily, or if terms of the Consultant Agreements are being violated.
 - If a situation arises where there is unsatisfactory performance due to a violation of Agreement terms, or nonperformance, coordinate with the Portfolio Manager or CMD Chief for possible agreement termination.
- Invoice
 - Compare work progress with percentage of completion claimed on an Invoice under consideration.
 - Process acceptable invoices within seven calendar days after receipt.
- Disputes
 - Responsibility in resolving disputes in the procurement, management, and administration - see Publication 442, Chapter 5.

4.2.1 – Managing Consultants

This section describes the procedures to be followed for monitoring the performance of work and services of a consultant.

Managing consultants begins during negotiations and does not end until final acceptance of the work and services effort has been accomplished, final payment is made, and the Agreement is final, closed-out.

Monitoring and control are essential to ensure the consultant uses and manages resources in a manner that will provide PennDOT exactly what was contracted for in terms of quality, timeliness, and economy of cost.

The IO staff manages consultants. This staff must be trained and experienced in order to oversee, supervise, and manage the consultant.

The IO Project Manager must communicate effectively between affected parties and serve as the sole point of contact with the consultant. This will allow the IO Project Manager to maintain control of directions given to the consultant.

Some methods available to communicate effectively with consultants are:

- **Kick-off Meeting** – A Kick-off Meeting with a consultant to discuss procedures during the Agreement period can eliminate many misunderstandings. These meetings should cover such issues as progress reporting, payment requests, interpretation of Consultant Agreement terms and conditions, Consultant Agreement modifications, evaluations, and other related items.
- **Status Meetings** – Periodic meetings to review a project's progress should be scheduled. These meetings can be used to assure the milestones established in the Consultant Agreement are on schedule. IO Project Managers need to assure themselves that only appropriate, necessary consultant staff is in attendance at each status meeting. Minutes of these meetings should be kept by the consultant and distributed to all parties. In some instances, Progress Reports (see below) can be substituted for these meetings for periods of time when minimal progress is noted for various reasons.
- **Consultant Office Visits** – Visits to the consultant's office allows the IO's Project Manager to become familiar with the consultant and staff, and to review and verify progress to date. This will allow the IO Project Manager to verify information completed. Organization and frequency of visits are dependent on each Engineering District's requirements or preference.
- **Progress Meetings and Reports** – Monthly progress reports should be furnished in writing to the IO's Project Manager by the consultant to document the status of the project. The progress reports should identify what was done in the past month, what is anticipated for the upcoming month, and identify outstanding issues that need to be resolved.

These reports should be formatted in such a manner that they could also be used for reporting status to upper management. The reports should also allow the IO's Project Manager to verify information provided.

For design agreements, The IO Project Manager should hold monthly (or other appropriate time period) meetings with the consultant to monitor the consultant's activity and performance.

At these meetings, the consultant will present its progress report.

Any deviation from the proposed schedule should be discussed and an action plan developed to ensure that the project is completed on time.

The consultant will be held responsible for documenting the results of these meetings by submitting meeting minutes for concurrence by the IO Project Manager. The consultant will also document any follow-up or corrective action taken. Documentation of meetings should be included in the status meetings task in the SOW.

The consultant's monthly invoice should correctly represent the amount of work, services, or tasks completed. The IO Project Manager must agree with the corresponding work associated with the invoice prior to approval.

For Construction Inspection Agreements, these meetings are not required, because the IO closely supervises the consultant's inspectors on a daily basis.

- **Performance Evaluations** – Interim reports regarding the consultant's performance should be provided as necessary. The evaluations give the consultant a documented record of performance. Interim evaluations can be a good tool to note unusual circumstances and can result in constructive feedback, encouraging communication and bringing continuous improvement.
- **Partnering Conferences** – A Partnering Conference should be used for complex, major projects. If formal partnering task(s) are included in the Consultant Agreement, partnering conferences may be held at the onset of the project. All interested parties meet to:

- establish formal commitment to common goals and objectives
- chart communication and disputes-resolution links
- begin team building activities to facilitate good project communication

These conferences may be conducted by a hired facilitator or in-house staff experienced in partnering activities. Follow-up conferences help keep the project development in line with established goals and objectives and renew team building.

4.2.2 – Construction Project Manager

Consultant Oversight After Letting

After a project is let, the District Construction Unit is responsible to establish all authorizations of work and validation of hours, prior to the agreement owner giving NTP on Consultation During Construction. Because the Method of Payment is usually specific rate, discussion must be held to review each task, in reference to the level of effort, deliverables for that task, and estimated schedule of completion.

The District Construction Project Manager must agree on the level of effort, deliverables, and estimate prior to any work commencing on that task. The District Construction Project Manager should consult, when necessary, with the appropriate PennDOT designer/technical experts, i.e. bridge, geotechnical, and traffic design personnel, depending on the services requested. The level of effort, list of deliverables, and estimate do not need to be entered into ECMS. These discussions must be held for **all** activities except Construction Inspection. No work is to occur beyond the current estimate for the assigned task. This is to be validated when approving payments. If an agreement with the consultant cannot be reached for a reasonable level of effort, the District Construction Project Manager should contact the CMD for further direction.

The District Construction Project Manager is to have firsthand knowledge that the invoiced services were provided. If the task is assigned to another unit (i.e. Bridge Unit for Shop Drawings or Right-of-Way for appraisal data), obtain written documentation that the hours invoiced are valid. The District Construction Project Manager should consult, when necessary, with the appropriate PennDOT designer/technical experts, bridge, geotechnical, and traffic design personnel, depending on the services requested. Consultant invoices are not to be approved without validation of the hours and services invoiced.

4.3 – Construction Inspection Agreements

It is the policy of PennDOT to have a PennDOT employee assigned to and be in responsible charge of inspection of all PennDOT construction projects.

Consultant supervisors and managers will generally perform the same functions as a PennDOT inspector-in-charge; however certain responsibilities will be retained by PennDOT.

When a Consultant inspector-in-charge is responsible for the day to day project supervision, the District is not relieved of its “responsible charge” obligations.

On non-Federal-Aid projects, the Deputy Secretary for Highway Administration or the Director of BODD may grant an exception to this policy if the IO presents sufficient justification, on a project by project basis, to warrant it. Retain documentation of this approval in the project file.

All consultant construction inspection agreements are specific rate agreements. Please review the project staffing needs with the Project Manager, ACE or other District construction staff to ensure that proper staff is requested. (Examples: TCIS vs. TCI, TCM vs. TCIS.) It is imperative that the people performing the inspection are properly classified and paid appropriately. Resume submissions and wage rate approvals are the processes to control this. Resumes are to be submitted into ECMS with the SOI. The standard template must be utilized with all information completed; including identification of work experience with timeframes, pay grade level, and evaluation method.

Under no circumstance should construction inspection staff be used to perform services that must be completed by Construction Management (CM) staff. For instance, CM staff must be responsible for reviewing Asta or CPM schedule updates, or shop drawings. Open end CM agreements can be used for this work, or a CM part can be added to a construction inspection agreement. When a CM part is incorporated into a CI agreement, the CM project staff must be nominated to the agreement through the Consultant Information Portal via the Review Pending Employee Rates link in ECMS. All of the agreement's CM personnel must be on the consultant's PennDOT-approved roster prior to working under a PennDOT Agreement. The agreement number must be entered on the ECMS EMPLOYEE RATE screen.

Because of the nature of the Highway Occupancy Permit (HOP) construction inspection work (i.e. short call times by the permittees, partial weeks for inspection, etc.), modifications to the standard SOW may be necessary. Modifications must be clearly stated and clarified within the advertisement for HOP construction inspection agreements so that all firms are aware of any differences to the standard SOW. Modification to the standard SOW is not permitted for typical roadway and bridge project inspection agreements.

4.3.1 – Substitutes

Employee substitutions can only be made after exhausting everyone listed in the SOI at that classification and skill set. When a consultant needs to provide substitutions for employees listed in the SOI, the reason for change must be submitted in writing. Districts have the authority to approve substitution requests provided that the documentation supports that the substitute is as, or more, qualified than the original person identified in the SOI.

The evaluation is based on: equal or higher pay grade, total experience, or experience on that type of work task. Should the substitution involve a person qualified at a higher classification (i.e. TCIS in lieu of the requested TCI), PennDOT reserves the right to pay the firm for the classification originally requested. This additional information is to be included in the comment section of the resume request that will be submitted to the District in ECMS.

Districts have the authority to approve requests to substitute an inspector with someone at the next level within the same classification (i.e. TCI-3 for a TCI-2). The District must pay at the higher level.

A request for a lower qualified individual, such as a TCI-2 to substitute for a TCI-3, who does not meet any of the allowable substitution criteria, needs a waiver approval from the Contract Management Division(CMD). In these cases, the consultant must attain a waiver prior to the initiation of work for less qualified personnel from the CMD Chief, or designee. Requests must be submitted to RA-pdconsult_waiver@state.pa.us. Approval is contingent on concurrence by the District.

Once a substitution has been approved, the next substitution would be based on the new individual's position instead of the original SOI individual. For example, if you request to substitute Joe as a TCI-2 for Sam who is a TCI-3 and it is approved, Joe would now be the person that could be substituted instead of Sam.

4.3.2 – Wage Rate Approvals

Consultants are to submit wage rate requests upon notification of selection based on their Technical Proposal. The wage rate requests are to be generated in Roster Maintenance in ECMS. Each inspector must have a 'Parent Approval'. The 'Parent Approval' request must be submitted via ECMS to the CMD. Once approved, the request can be 'Nominated' to the District for formal approval for a particular agreement. It is the District's responsibility to review/approve wage rate requests within five working days through ECMS. Absolutely no work is to occur without ECMS wage rate approval.

No one within PennDOT has the authority to direct a consultant to perform work without ECMS wage rate approval. In cases where a PennDOT representative directs the consultant to perform work without ECMS wage rate approval, the responsible individual will be subjected to disciplinary action.

Likewise, consultant employee substitutions require resume and wage rate approvals prior to any work being completed by that person.

During the course of a project, an inspector within the TA, TCI, TCIS or TCM classifications can be promoted to the next level within the classification if the required certifications are obtained. An inspector cannot move more than one level during any 12 month period. An inspector cannot move to the next classification, (TCI to a TCIS for example) during a project unless the project's original advertisement would allow the promotion based on the number of inspectors needed at the higher classification or if the District concurs with the need for the higher level position.

As consultant resources are needed or not needed, PennDOT will provide all assignment requests in writing. Emails are the preferred method; however, facsimiles are acceptable. The consultant is responsible for maintaining copies of all requests. PennDOT can request for the following classifications (Transportation Construction Inspector (TCI), Transportation Construction Inspector Supervisor (TCIS), Transportation Construction Manager (TCM), or Technical Assistant (TA)), and specific experience required (asphalt paving, bridge inspection, etc.). Individuals assigned to these classifications will be determined by the consultant.

TA level inspectors do not count towards the number of requested TCI's listed in an advertisement. Since the intent is to promote TA positions in this industry, if a TA-2 is eligible for promotion to a TCI, they can be promoted even if there is not an available TCI position remaining. For example, if a project is started with 2 TA positions and 8 TCI positions, it is allowable that by the end of the project there are 10 TCI positions due to the promotion of the TA positions.

The IO may not request specific persons by name or pay level (TCI2). The prime consultant is solely responsible for adding or removing subconsultants to meet contractual obligations, including DBE requirements.

All construction inspection firms are required to enter an "Effective End Date" in ECMS for all inspection wage rate requests. The Effective End Date is the expiration date of the earliest expiring certification that would affect classification requirements as documented on the individual's resume. After a wage rate request expires in ECMS, the inspector will not appear on the firm's employee roster for that classification when creating and processing invoices.

If an individual is qualified for a position strictly on years of experience, the firm enters 12/31/2099 as the Effective End Date. This way, the firm meets the requirement and the individual will not appear on the Employee Expiring Rates link until 2099.

If an Effective End Date is entered, the firm can monitor when individual's rates will expire in ECMS by checking the Employee Expiring Rates link on the Consultant Information Portal. This link provides a list of rates expiring within the next thirty days so there is adequate time to submit an updated resume to retain the classification.

Example:

A Transportation Construction Inspector 2 (TCI-2) is qualified based on One (1) year minimum PennDOT experience as a Transportation Construction Inspector 1 (TCI-1) and One (1) of the following Three (3) certifications: PennDOT Concrete Technician, NECEPT Field Technician, or NICET Level II Certification or higher in Highway Construction.

If the PennDOT Concrete Technician certificate expires 12/31/13, the NECEPT Field Technician certificate expires 1/16/14, and the NICET Level II certificate expires 3/5/14, then the firm enters 3/5/14 as

the Effective End Date because the individual only needs one of the three certifications and this is the latest that keeps the individual qualified for the classification.

4.3.3 – Process Control

Refer to Appendix 4A - Process Control for Construction Inspection Contract Issues for the procedure for dealing with contractual violations and administrative deficiencies. All violations for any of those parameters are to be forwarded in writing to the Director of Bureau of Design and Delivery, Attn. Contract Management Division. The CMD Chief will maintain a log of violations and issue sanctions as appropriate.

Likewise, PennDOT personnel are to strictly adhere to PennDOT policies or be subjected to disciplinary action.

4.3.4 – Consultant Inspection Compliance Process

Each and every consultant inspector must have their resume reviewed by the CMD representative to confirm the appropriate classification with the contract requirements.

The CMD representative has a Consultant Inspection Compliance Process that consists of resume reviews and wage rates as follows:

- a. Identifies the proposed inspector's classification and the minimum experience and training required for that position.
- b. Ensures the education information is completed and meets the classification and the minimum experience and training required for that position.
- c. Confirms that the certification data includes certification number(s) and the expiration date(s). Check that certifications listed are sufficient to meet the classification requirements. The CMD will validate all certifications listed on the resume with the issuing agency (NECEPT, NICET, etc.).
- d. Reviews the experience data provided in the resume to verify it meets the classification requirements. Note that utilization of equivalent combination of training and experience is only for extraordinary cases and only with concurrence of the BODD, PSSC Section Chief.

4.3.5 – Invoicing

The District Construction Project Manager must validate that the hours invoiced accurately reflect the hours worked prior to authorizing payment.

Each inspector must use the Consultant Inspector Hours and Mileage Log form to record their hours and mileage activities. This can be a paper or electronic document. A separate form must be used for each inspector on a weekly basis. Signed forms must be attached to each invoice in ECMS for the billing period. If an electronic format is used via ECMS, the approved forms will electronically be attached when the invoice is created and the inspectors' hours are added to the invoice.

4.4 – Supplementing Consultant Agreements

A Supplemental Agreement allows PennDOT to change any terms and conditions of an existing Consultant Agreement where warranted.

When a Legal Supplement is being generated in ECMS all current attachment hyperlinks are incorporated into the document. By this means any updated documents will be incorporated in the Agreement upon full execution of the Legal Supplement.

Because PennDOT specifies a total dollar amount as well as a time limitation for Non Project Specific Open Ends, supplementing them is generally only done for adding a subconsultant. Changes in time of completion for Non Project Specific Open End Agreements are only done when justified by the IO and with the approval of the Deputy Secretary for Highway Administration or designee. Changes in funding amount for Non

Project Specific Open End Agreements are only done when justified by the IO and with the approval of the Office of Chief Counsel and the office of the Comptroller.

If changes are needed in Consultant Management Project Manager Agreements, FHWA approval will also be needed.

A Supplement is necessary to accomplish the transfer of funds between Categories of Compensation or between firms. For Cost Plus Fixed Fee Parts, no additional Fixed Fee is allowed in these instances.

For each of the different types of Supplements listed below is a flow chart which references the Section of Publication 93 that deals with that particular action. The Estimate, Scope of Work, Technical and Price Proposals, reviews, approvals, and NTPs will need to follow the procedures outlined in that section. Appendix 4I – Supplementing Consultant Agreements provides guidance on selecting the appropriate supplement type for a desired action or circumstance and for the expected timeframes for normal and expedited processing times.

For each Part, ECMS reads the Completion Date from the Supplement's Technical Proposal and inserts a new Part Expiration Date. Also, the cost figures are read from the Supplement Price Proposal and the Part's budgeted cost figures in the invoicing module are updated electronically.

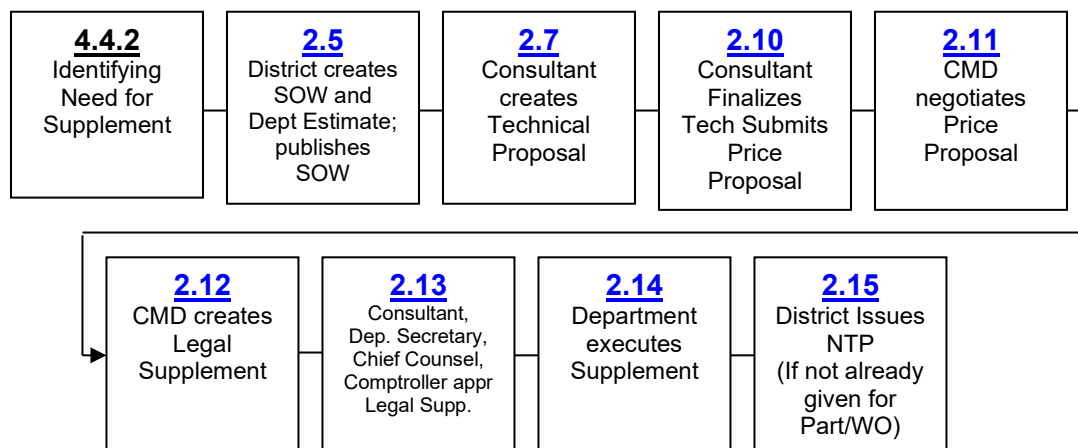
4.4.1 – Types of Supplements

There are five types of Supplements in ECMS:

1. Normal Supplement
2. Open End Time Extension Supplement
3. Administrative (No Cost) Supplement
4. No-Fee Supplement
5. Express Supplement (No-Fee)

Chart 4.1 – SUPPLEMENT USAGE					
Supplement Type	Create Legal Supplement	Comptroller Review	Legal Review	Agreement Type	Comments
Normal	• CMD	Yes	Yes	• Project Specific • Open End	
OE Time Extension	• CMD	No	No	• Open End	• Cannot Change Agreement Cost • Can change DBE % •
Administrative	• District • CMD	No	No	• Project Specific	• DBE % Change • Change part expiration date • Fund Transfer – →Price Proposal must have net dollar change of \$0 →Can transfer money between consultants on each part (Each part must have a net change of \$0)
	• District • CMD	No	No	• Open End	• Can add subconsultant using a generic task • DBE % Change •
No Fee	• District • CMD	Yes	No	• Project Specific	• Profit Factor Must =0 • Price Proposal does not have to have a net dollar change of \$0 • Can change part costs • Cannot add tasks • Cannot add subconsultants
Express Supplement	• District • CMD	Yes	No	• Project Specific	• Agreements executed prior to May 1, 2009 must have a term modification allowing an Express Supplement

4.4.2 – Normal Supplement



Identifying Need for Supplement

Normal supplements to a Project Specific Engineering Agreement are utilized for these basic reasons:

1. Changes in the Scope of Work
2. Additional funds needed to complete the existing Scope of Work
3. Consultant Agreement Close-Outs
4. Addition of Subconsultant
5. Transfer of funds between Categories of Compensation
6. Transfer of funds between firms

Changes in the Scope of Work - A change in the SOW requires the execution of a Supplemental Agreement to revise the Consultant Agreement. This must be done prior to performance of the work and services required. As indicated in [Section 5.7](#), a consultant cannot work outside an executed agreement.

Additional Work Tasks can only be added to the Consultant Agreement if they are within the context of the original advertisement.

Additional funds needed to complete the existing Scope of Work - When additional funds are needed to complete the work and services described in the Consultant Agreement (i.e., when costs will exceed the originally proposed amount), a supplement may be justified. The IO needs to consider, whether the need for additional funds was caused by a low initial Price Proposal estimate, excessive re-work caused by PennDOT, re-work caused by the consultant's poor performance, etc. when deciding whether to recommend the processing of a supplement.

When a Cost Plus Fixed Fee Consultant Agreement Part is being Supplemented, the IO Project Manager needs to determine whether the change constitutes a change in the SOW, or if more work-hours are needed to accomplish the existing SOW. The Technical Proposal can be relied upon to make this determination.

- If the existing description would not change when compared to the contemplated work and services, additional Fixed Fee cannot be allowed.
- If the Supplemental Technical Proposal task Department Details and Approach are appreciably different from the current Technical Proposal discussion for the task(s), the change constitutes a change in the SOW and additional Fixed Fee would be appropriate.
- In ECMS, the Profit is assigned to a Part under the original agreement. However, ECMS will allow the Fixed Fee to be assigned on a task basis rather than on a part basis. For this reason, some tasks, which may consist of additional work-hours, as well as, a change in the SOW, may have a weighted average of profit from 0% to 100% to depict the portion in which profit actually applies.

Examples of circumstances in which Fee should be included and circumstances in which no-fee should be included can be found in Appendix 4B - Guidelines to Determine When Fee Should be Included in a Supplemental Agreement (Cost Plus Fixed Fee Agreement).

Consultant Agreement Close-Outs - A close-out supplement is required when the remaining funding encumbrance needs to be unencumbered under a Part of a Consultant Agreement where the Consultant Agreement has not yet been finalized. In lieu of a close-out supplement, the final invoice will need to include less than 100% complete for those tasks that were not completed under Cost Plus Fixed Fee and Lump Sum Parts.

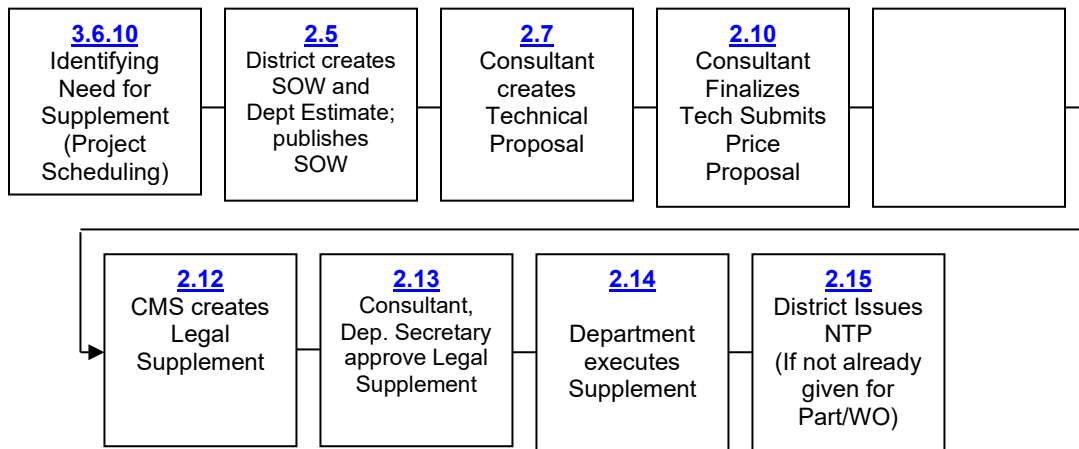
Addition of Subconsultant - On occasion, it may be necessary to add a subconsultant to assist in completion of the work and services. In these instances, the IO must concur with the subconsultant selected by the prime. The IO cannot request that a specific subconsultant firm be added.

Normal Supplement Transfer of Funds between Categories of Compensation - A supplement is necessary to accomplish the transfer of funds between Categories of Compensation.

Normal Supplement Transfer of Funds between Firms - A supplement is necessary to accomplish the transfer of funds between firms on an agreement.

The IO needs to consider, whether the need for transfer of funds was caused by a low initial Price Proposal estimate, excessive re-work caused by PennDOT, re-work caused by the consultant's poor performance, etc. when deciding whether to recommend the processing of a supplement.

4.4.3 – Open End Time Extension Supplement



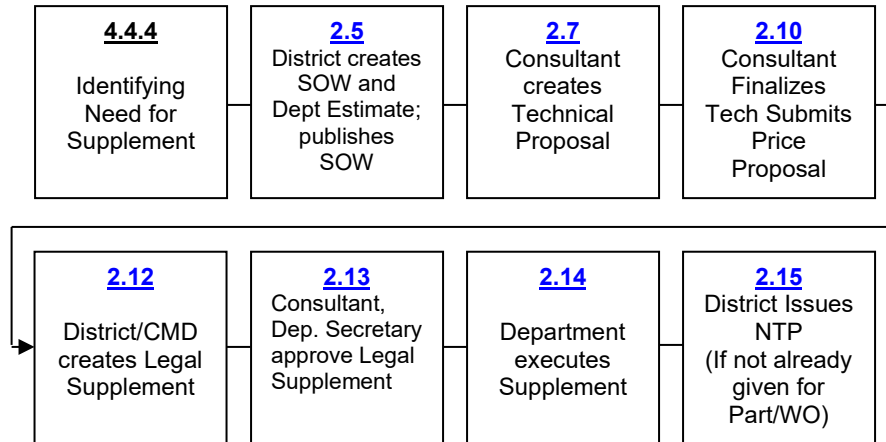
Identifying Need for Supplement

Time Extension - On a limited basis the expiration date for an Open End Agreement may be extended.

ECMS defaults to the current completion date. The date the consultant enters on the Technical Proposal will become the new completion date for the agreement or Part. The consultant is responsible to inform the IO Project Manager when this date is revised. The IO Project Manager should ensure that the completion date on the Technical Proposal is acceptable.

See [Section 3.6.10](#) Project Scheduling for additional information.

4.4.4 – **Administrative (No Cost) Supplement**



Identifying Need for Administrative (No Cost) Supplement

Milestones for Department Technical Review Received, Central Office Evaluation, and Fiscal Papers Prepared, if applicable, should be completed prior to the creation of the Legal Supplement and must be completed prior to execution.

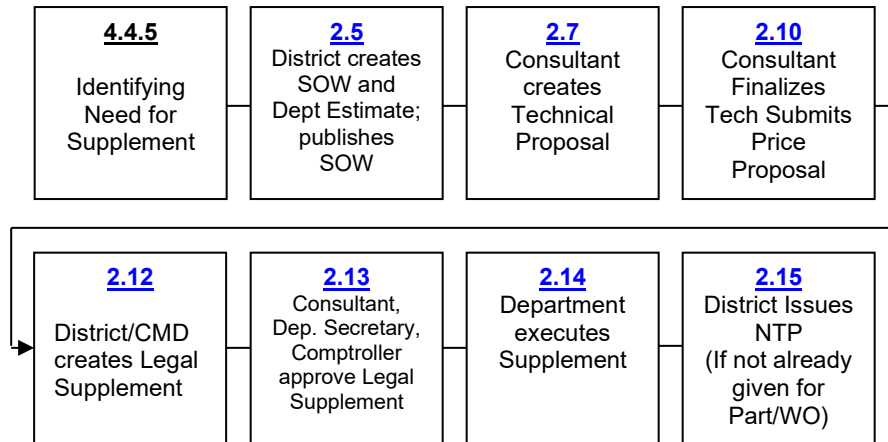
Administrative Transfer of Funds - A Supplement is necessary to accomplish the transfer of funds between Categories of Compensation or between firms in ECMS. For Cost Plus Fixed Fee Parts, no additional Fixed Fee is allowed in these instances.

Addition of Subconsultant - On occasion, it may be necessary to add a subconsultant to assist in completion of the work and services. In these instances, the IO must concur with the subconsultant selected by the prime. The IO cannot request that a specific subconsultant firm be added.

Time Extension - A time extension can be incorporated in an Administrative Supplement for Project Specific Agreements.

ECMS defaults to the current completion date. The date the consultant enters on the Technical Proposal will become the new completion date for the agreement or Part. The consultant is responsible to inform the IO Project Manager when this date is revised. The IO Project Manager should ensure that the completion date on the Technical Proposal is acceptable.

4.4.5 – No-Fee Supplement



Milestones for Department Technical Review Received, Central Office Evaluation, and Fiscal Papers Prepared, if applicable, should be completed prior to the creation of the Legal Supplement and must be completed prior to execution.

For District-created supplements when a Legal Supplement is created, the District shall submit a Contractor Responsibility Request (CRR), for the Contractor Responsibility Provision (CRP), for approval. This procedure can be expedited when Districts use the electronic NPM process outlined in [Section 3.6.1](#). The CRP must be processed prior to Comptroller's approval.

Identifying Need for Supplement

Additional funds needed to complete the existing Scope of Work - A No-fee Supplement can be used on agreements that have established unit costs and scopes of work, but the level of effort has slightly increased beyond what was originally estimated. A No-Fee Supplement may be used in a circumstance where both the IO and consultant Project Managers have determined that the supplemental effort under consideration does not constitute a change in the SOW (Extra Work), but does require more person hours to complete than originally anticipated (Additional Effort). Examples of circumstances in which Fee should be included and circumstances in which no-fee should be included can be found in Appendix 4B - Guidelines to Determine When Fee Should be Included in a Supplemental Agreement (Cost Plus Fixed Fee Agreement).

In the Department Estimate, the profit factor indicator for this agreement must be “no” for all parts. The District will not be able to add tasks or subconsultants under this type of supplement. Money can be transferred between consultants within the same part.

4.4.6 – Express Supplement (No-Fee)

The procedure for creating a Express Supplement using the Express Supplement Form is shown in detail in Appendix 4C Express Supplement (No-Fee) Process Flow.

Milestones for Department Technical Review Received, Central Office Evaluation, and Fiscal Papers Prepared, if applicable, should be completed prior to the creation of the Legal Supplement and must be completed prior to execution.

For District-created supplements when a Legal Supplement is created, the District shall submit a Contractor Responsibility Request (CRR), for the Contractor Responsibility Provision (CRP), for approval. This procedure can be expedited when Districts use the electronic NPM process outlined in [Section 3.6.1](#). The CRP must be processed prior to Comptroller's approval.

Identifying Need for Supplement

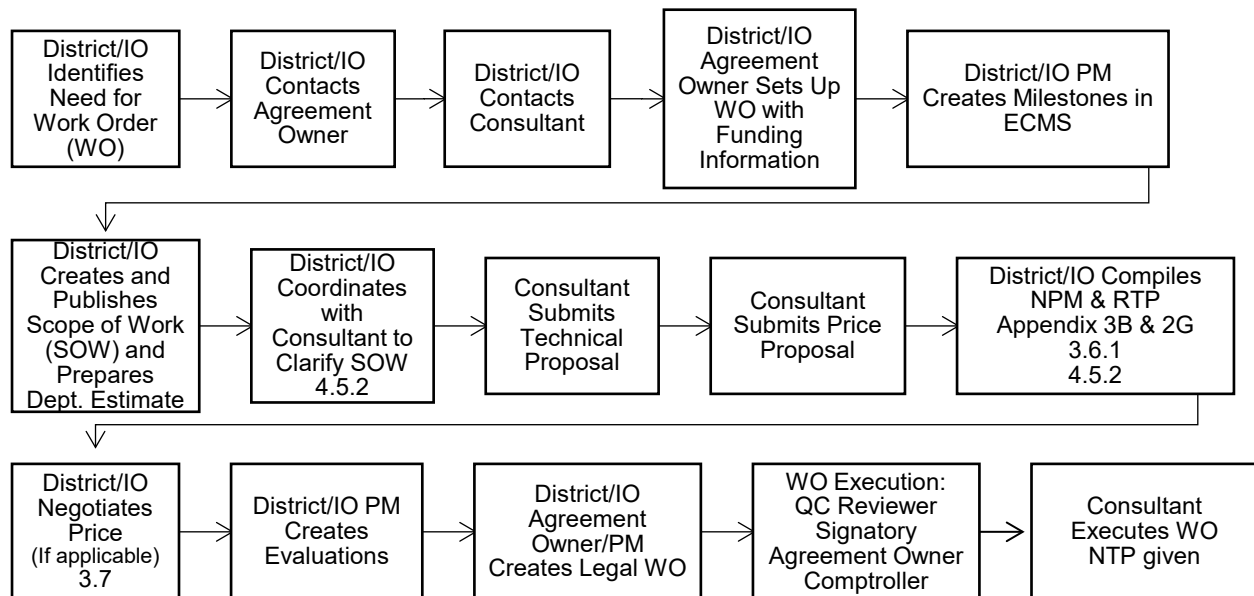
Additional funds needed to complete the existing Scope of Work - When a No-Fee Supplement needs to be made in an expedited manner, a signed paper Express Supplement (No-Fee) will allow the consultant to continue to work on a project before an “Express Supplement (No-Fee)” can be completed in ECMS.

After IO and consultant Project Managers have determined that the Express Supplement (No-Fee) Process is applicable, an “Express Supplement (No-Fee) – (Authorization for Consultant Contract Work)” form, see [Appendix 4D](#), must be completed. Upon signature of this form and the establishment of funding in SAP, the consultant may continue work. **A prompt Express Supplement (No-Fee) in ECMS must occur within 30 calendar days for the consultant to have the ability to invoice for work covered by the paper Express Supplement (No-Fee)**, as indicated in Appendix 4C - Express Supplement (No-Fee) Process Flow Chart.

For state paper agreements, the actual “Express Supplement (No-Fee)” will be the actual Supplement and will be assigned the next available supplemental letter.

The District Executive is responsible to ensure the quality of the District’s Express Supplements (No-Fee). A Quality Control Plan outlining the procedures that the District will implement must be created and approved prior to creating any Express Supplements (No-Fee). Appendix 4E Example Quality Control Certification for Express Supplement (No-Fee) shows a sample Quality Control Certification.

4.5 – Work Order



4.5.1 – Engineering District Work Order Quality Control Reviewer

Each Engineering District will authorize a minimum of two people to be Quality Control Reviewers for Work Orders generated in the Engineering District.

ECMS will provide a drop-down list of approved Signatories and QC Reviewers.

The CMD will provide Quality Control Review for Work Orders generated by Central Office staff.

4.5.2 – Initiate the Work Order

The IO will prepare a SOW in ECMS using the WBS as its basis. The IO will coordinate with consultant to discuss/clarify details. The consultant will indicate their approach to the scope in ECMS and submit it with a breakdown of the estimated cost to PennDOT. The consultant may not invoice PennDOT for the cost of attending scoping meetings or for preparing proposals.

The IO will compile the following information for the file:

- Negotiation Position Memorandum (NPM) - Appendix 3B Negotiation Position Memorandum (NPM)
- Review of Technical Proposal - Appendix 2G

These documents are necessary so that the IO QC Reviewer can verify that the Price Proposal meets PennDOT's standards for a fair and reasonable cost, and that the IO Project Manager has either circulated the Technical Proposal to all units that have expertise in the various tasks contemplated in the WO or has obtained approval of the adequacy of the Technical Proposal by the Assistant District Executive of Design or the District Portfolio Manager.

If an IO has two Open End agreements with the same consultant and has a Work Order on one for Preliminary Engineering, and another Work Order on the other Open End agreement for Final Design, the Preliminary Engineering Phase or the environmental clearance must be completed prior to execution of the WO for Final Design. These two Work Orders may be open at the same time providing that assurance can be given that there is not duplication of effort between the two Work Orders.

See Section 4.5.3 for work orders on multiple non-project specific open end agreements advertised under one advertisement.

4.5.3 – Work Orders on Multiple Non-Project Specific Open End (NPS-OE) Agreements Advertised under One Advertisement

This applies to any grouped NPS-OE agreements advertised after June 22, 2016.

If multiple NPS-OE agreements are selected through a single advertisement, an additional QBS may need to be completed prior to assigning a work order to a consultant.

IO will request each prime consultant that was selected in the grouped advertisement to submit a letter documenting their qualification based on the district scope of work for the work order and the selection criteria provided.

The request may include the following:

- Location and Scope of work for the work order.
- Date and time the consultant letter is due.
- Other information as necessary.

The Prime consultants should respond accordingly to this request. The IO and Prime Consultant should keep in mind that this is a QBS and any reference to costs will cause the consultant letter to be void. The IO must evaluate each submission and award the work order to the most qualified firm.

The IO must document the justification for selecting the consultant for each work order and retain the documentation as required in Section 5.3.

The additional QBS is not required if a District grouped advertisement for NPS-OE agreements designates a specific county(ies) for each agreement or if a CO grouped advertisement designates a specific district(s). In these cases the work will be assigned accordingly.

However, if the work load in a county or district designated for one agreement is at maximum capacity for the designated consultant to handle additional projects, a QBS must be completed among the remaining consultants in the multiple NPS-OE advertisement for any additional work orders.

- If the IO does not advertise for multiple open ends in one advertisement, an additional QBS for each work order will not be required.

4.5.4– Cost Plus Fixed Fee Method of Payment Functioning like a Specific Rate of Compensation

If under a WO a Cost Plus Fixed Fee method of payment is being used to accomplish work and services normally associated with a Specific Rate of Compensation method of payment, a statement needs to be included in the WO that makes it function like a Specific Rate of Compensation Work Order. This language needs to be included as an “Additional Legal Document Condition” in the WO. An example of this language is:

"The Engineer will receive a fixed fee of \$8.26 per hour of service up to a maximum of \$1,553.72."

These figures are developed by dividing the total Fixed Fee (\$1,553.72 in this case) by the total work-hours (188 in this case) in the WO.

4.5.5 – Funding

The IO Project Manager should begin the process of providing the SAP-8 form to the Office of the Comptroller after approval of the Legal Work Order by the QC Reviewer.

Each WO should have a unique State Project Number(s) (SPN). For example, when additional SOW is being added to a WO for the preliminary phase, that WO should be amended to add the work and services since the SPN would remain the same. If generating the SOW for final design a new WO would be created.

4.5.6 – CMD Quality Assurance (QA) Review

The CMD will conduct annual QA reviews of selected District processed WOs and discuss the results of the QA review with the IO Portfolio Managers. The IO's authority to process and create WOs may be reduced or rescinded based on the results of the QA reviews.

4.5.7 – Start Work

As indicated in [Section 5.6](#), no work and services will be provided under an Open End Agreement until a WO is executed. No WO will be executed where the work and services is expected to last beyond the termination date of the Open End Agreement.

4.5.8 – Statewide Open End Agreements

For use of statewide Open End Agreements, submit a transmittal letter to the Open End Agreement Owner requesting the use of the Open End Agreement, attaching a proposed SOW and Department Estimate. The SOW will need to be developed using the WBS format by cutting-and-pasting from ECMS. If the Agreement Owner concurs with the Work Order assignment the Agreement Owner will forward the SOW to the consultant with instructions to contact the IO Project Manager for the submission of Technical and Price Proposals. The same procedure will be used for any Work Order amendments (except close-out amendments), regardless of the amount. **Note that the consultant will not be contacted until the Agreement Owner asks the consultant to contact the IO Project Manager.**

4.5.9 – Processing a Work Order Close-Out Amendment

If the IO desires to reduce the WO encumbrance in SAP prior to the expiration of the Open End Agreement, or if the agreement capacity still reserved for that WO is needed for additional WO or Amendments, a Close-out Amendment is required.

If a WO using a *Cost Plus Fixed Fee* or *Lump Sum* method of payment is terminated prior to the consultant providing all of the work and services covered by the WO, the IO and the consultant must agree on the percent complete to determine the amount of Fixed Fee or Lump Sum earned. Since the percent complete is dependent on the amount of Scope completed, the final invoice will need to include less than 100% complete for those tasks that were not completed.

The SOW for a close-out amendment should be brief.

The Department Estimate should not include more than one Labor Task or Direct Cost. When developing the Labor Task, be sure to choose the classification entitled "Close-out Adjustment". This will allow negative amounts to be included. The Direct Cost should also consist of only one negative amount.

Once acceptable Technical and Price Proposals have been received, the amendment can be processed similarly to other amendments with the exception that the NPM and the Review of the Technical Proposal is not necessary.

4.5.10 – Scope of Work for Design Review Work Orders

Consultants need to understand how to perform this work acceptably without crossing the fine line into managing another consultant - PennDOT needs to retain management responsibility even though in these cases we are not generating the design review comments. This can be accomplished by including the following in the Agreement Details:

"The design consultant will transmit products to be reviewed to the review consultant with a copy of the transmittal letter to the District Project Manager; the review consultant will provide comments to the Project Manager; the Project Manager will concur or not concur with the comments and forward the accepted ones to the design consultant; revised products will be sent by the design consultant to the Project Manager and the review consultant to ensure that their comments (which had been accepted by the Project Manager) were adequately addressed. The review consultant will then submit a letter to the Project Manager stating whether or not their comments were adequately addressed. This process may be repeated as necessary, depending on the quality and complexity of the submission. After all reviews are completed for a particular submission, the review consultant will then submit a letter to the Project Manager stating whether or not they recommend that the Engineering District concur with/approve the submission. The Project Manager will then notify the design consultant of approval."

4.5.11 – Work Orders for Assignments on Various Small Projects

Guidelines to provide a flexible means of completing small tasks on a variety of projects under a single Work Order can be found on the shared drive at:

[\\pdfpfap2k01\data\penndot_shared\Bureau of Design\Design Services Division\Consultant Agreement Section\Publications](\\pdfpfap2k01\data\penndot_shared\Bureau of Design\Design Services Division\Consultant Agreement Section\Publications)

Typical Applications for using these Work Orders are:

- a) Work Orders should be established for the specific task(s)
- b) Proposed scope of work must be in accordance with the advertisement for the agreement
- c) Work Orders must function as Specific Rate
- d) Assignments to be completed under the general WO should not exceed \$100,000. Assignments over \$100,000 should be completed by a standalone WO.

4.5.12 – Work Order Amendment

A Work Order Amendment allows PennDOT to change terms and conditions of an existing Open End Work Order when warranted. If the District has a Certified Negotiator, the District is authorized to negotiate, create, and submit the legal agreement for Work Order Amendments. For Work Order Amendments on Project Specific Open End Agreements that are greater than \$1,000,000 or when a District does not have a Certified Negotiator, only a Certified CMD Negotiation Engineer is authorized to negotiate the cost of the Amendment. Scope of Work, Technical and Price Proposals, reviews, approvals, and NTPs will need to follow the procedures outlined in Section 4.5.2.

These are the basic reasons for a Work Order Amendment:

1. Changes in the Scope of Work
2. Additional funds needed to complete the existing Scope of Work
3. Closeout Amendment (refer to Section 4.5.9)
4. Addition of Subconsultant (from the agreement team) to a Work Order
5. Transfer funds between Categories of Compensation
6. Transfer funds between firms

Changes in the Scope of Work - A change in the SOW requires the execution of a Work Order Amendment to revise the Consultant Agreement. This must be done prior to performance of the work and services required. As indicated in Section 5.6, a consultant cannot work outside an executed agreement. Additional Work Tasks can only be added to the Consultant Agreement if they are within the context of the original advertisement.

Additional Funds Needed to Complete the Existing Scope of Work - When additional funds are needed to complete the work and services described in the Consultant Agreement (i.e., when costs will exceed the originally proposed amount), an amendment may be justified. The IO needs to consider, whether the need for additional funds was caused by a low initial Price Proposal estimate, excessive re-work caused by PennDOT, re-work caused by the consultant's poor performance, etc. when deciding whether to recommend the processing of an amendment.

When a Cost Plus Fixed Fee Work Order is being Amended, the IO Project Manager needs to determine whether the change constitutes a change in the SOW, or if more work-hours are needed to accomplish the existing SOW. The Technical Proposal can be relied upon to make this determination.

- If the existing description would not change when compared to the contemplated work and services, additional Fixed Fee cannot be allowed.
- If the Supplemental Technical Proposal task Department Details and Approach are appreciably different from the current Technical Proposal discussion for the task(s), the change constitutes a change in the SOW and additional Fixed Fee would be appropriate.
- ECMS will allow the Fixed Fee to be assigned on a task basis. For this reason, some tasks, which may consist of additional work-hours, as well as, a change in the SOW, may have a weighted average of profit from 0% to 100% to depict the portion in which profit actually applies.

Examples of circumstances in which Fee should be included and circumstances in which no-fee should be included can be found in Appendix 4B - Guidelines to Determine When Fee Should be Included in a Supplemental Agreement (Cost Plus Fixed Fee Agreement). This also applies to work order amendments.

Addition of Subconsultant from Agreement Team - On occasion, it may be necessary to add a subconsultant from the agreement team to assist in completion of the work and services. In these instances, the IO must concur with the subconsultant selected by the prime. The IO cannot request that a specific subconsultant firm be used.

Transfer of Funds between Categories of Compensation - A work order amendment is necessary to accomplish the transfer of funds between Categories of Compensation.

Transfer of Funds between Firms - A work order amendment is necessary to accomplish the transfer of funds between firms on the agreement.

For a work order amendment transfer of funds, the IO needs to consider whether the need for transfer of funds was caused by a low initial Price Proposal estimate, excessive re-work caused by PennDOT, re-work caused by the consultant's poor performance, etc. when deciding whether to recommend the processing of an amendment.

4.5.13 – Advanced Notice to Proceed (ANTP)

The Department reserves the right to issue an Advanced Notice to Proceed (ANTP) to the Consultant by means of an ANTP Letter, in a form prescribed by the Department (Appendix 4J), signed by authorized representatives of the Department and the Consultant, for any Work Order or Work Order Amendment prepared during the term of this Agreement or any supplements or extensions thereof. The parties shall act promptly following issuance of the ANTP to prepare and execute the Work Order or Work Order Amendment. Upon receipt of the ANTP, the Consultant may rely on it to begin performing work and incurring costs under the Work Order or Work Order Amendment; provided, however, that the Consultant shall not invoice the Department for work performed and costs incurred, and the Department shall not make payment until the Work Order or Work Order Amendment has been fully executed. A work order should be executed in ECMS within 60 days of ANTP. If the Work Order or Work Order Amendment is not fully executed on account of budgetary reasons or issues relating to form and legality, the Consultant risks nonpayment for any work already performed. If federal funds are involved with the work order, do not issue the ANTP prior to FHWA authorization of funds (Form D-4232, Authorization of Funds). If the IO issues the ANTP prior to FHWA authorization of funds, the funds expended prior to FHWA authorization must be paid with state funds.

4.6 – Funding

4.6.1 – Program Management Committee (PMC) Approval

The IO will monitor costs to ensure that the PMC's approved cost is sufficient to cover the cost of the Consultant Agreement, the Department's costs, and all other Consultant Agreements providing work and services on the project. If the total estimated cost of the Consultant Agreement plus the state expenditures estimated in accordance with the appropriate percentage indicated below plus all other project contractual obligations exceeds the PMC-approved amount, the IO must request and obtain approval through the Center for Program Development and Management for the increase in the approved cost before the encumbrance document is completed.

If the Consultant Agreement amount is:

Under 100,000	add 20% for State Expenditures
\$100,000 to \$1,000,000	add 15% for State Expenditures
Over \$1,000,000	add 10% for State Expenditures

The IO will check to see that sufficient unencumbered funds are available (in County or Engineering District appropriations) for the appropriate program and major object.

The estimated cost of the construction inspection Consultant Agreement plus the add-on for state expenditures as specified above should be within the following guidelines:

If the estimated construction cost is:	the maximum percentage for construction inspection is:
LESS THAN \$1,000,000	UP TO 15%
\$1,000,000 TO \$ 5,000,000	UP TO 12%
OVER \$5,000,000	UP TO 10%

4.6.2 – SAP Encumbrance

For both types of Open End Agreements, an encumbrance in Systems Application Products (SAP) for the entire Consultant Agreement amount will be initially established using a blanket code SPN (dummy number). As PennDOT seeks to execute individual Work Orders the encumbrance will be adjusted to remove the amount of the Work Order from the blanket code and add the amount of the Work Order to the appropriate SPN. By use of this blanket code accounting PennDOT assures that the maximum amount of the Open End Agreement will not be exceeded.

Open End Agreements can be created with multiple methods of payment.

4.6.3 – Invoice

All costs must be in accordance with federal cost principles, as contained in the FAR.

This section describes the procedures to be followed for processing consultant invoices for payment. Invoices for all Consultant Agreements are to be submitted and processed in the same manner, regardless of the type of Consultant Agreement. Refer to Appendix 4H.

The consultant shall not be entitled to demand or receive payment for any work as "additional work" or "extra work" which was not provided by the terms of the Agreement.

Partial Payments

The interval for consultants to submit an invoice should be four to six weeks. ECMS will allow prior period invoicing if charges were missed. A note (comment) should be added in ECMS to explain missed charges. The invoicing period should not span between the consultant's two fiscal years.

Each subconsultant invoice must be approved by the supervising consultant (which may be either another subconsultant or the prime). All subconsultant invoices for the same Consultant Agreement/Part number that are in "Supervisor Firm Approved" status are linked with the prime invoice into a "payment".

Lump Sum Payment – As the work progresses, PennDOT, at its discretion, may require the consultant, at intervals of time of one month or longer, to develop and submit an interim Progress Report as provided in these Specifications. The IO Project Manager will verify the Progress Report and upon acceptance will process the consultant's invoice as provided above.

Cost Per Unit of Work Payment - The consultant shall follow the same provisions as for the Lump Sum payment above for each Unit of Work to establish the interim progress percentage. The maximum cost to PennDOT as set forth in the Special Requirements, shall not be exceeded without the prior approval of PennDOT and, where applicable, the FHWA, in the form of a Supplemental Agreement hereto.

Cost Plus a Fixed Fee Payment - The consultant may at intervals of not less than once a calendar month submit an invoice for its accrued direct and indirect costs for the invoice period, including certified invoices paid to subconsultants, subcontractors and suppliers. The Lump Sum for Fixed Fee will be processed as same as that for Lump Sum Method, above, with the exception that any amount earned based on the interim Progress Report regardless of the amount will be invoiced as a part of a monthly invoice for direct and indirect costs as set forth above.

The computation of the consultant's monthly partial payment will be computed initially using the provisional Overhead Rate as provided in the Special Requirements attached to the Agreement.

The consultant shall have a FAR Audit performed by a Certified Public Accountant to determine the consultant's actual Overhead for the consultant's fiscal year in accordance with [Section 3.6.4](#).

Upon notification by PennDOT of the acceptance of the Overhead Rate for the consultant's fiscal year, the consultant shall, by an appropriate adjustment of the prior partial payment invoices, in which the provisional

Overhead Rate was used, submit an invoice to PennDOT for the amount due the consultant or make an appropriate refund to PennDOT for Overpayments.

The accepted audited fiscal year Overhead shall be used as the provisional Overhead Rate for the ensuing fiscal year and at its end, the consultant and PennDOT will establish the accepted audited Overhead Rate and the foregoing adjustments will again be made. The verification of the consultant's Overhead Rate together with the appropriate adjustment of the consultant's billing will be accomplished for each of the consultant's fiscal years for the term of the Agreement.

Specific Rate of Compensation - The consultant may at intervals of not less than one month submit an invoice covering such earnings to PennDOT.

Monitoring of Costs

Each Consultant is responsible for monitoring costs pertaining to its specific agreement and the amounts for each Category of Compensation established within the Legal Agreement, Part, or Work Order. These Categories of Compensation are identified for each Method of Payment in Section 3.5.

A provision in the legal agreement requires that when the costs of a part of the agreement reaches 75% of the total amount approved for that part, that the consultant shall evaluate the status of the part. If the consultant can complete the work within budget, a note to this effect should be included on the submitted invoice. If the consultant cannot complete the task within budget, the consultant must cease work and notify PennDOT.

ECMS will prompt the Consultant with a warning message when the Consultant submits an invoice having reached 50% of their payroll budget for the Part/Work Order. ECMS will prompt the Consultant with a second warning message when the Consultant submits an invoice having reached 75% of their payroll budget for the Part/Work Order. At the 75% warning, a workflow comment is required to be entered by the Consultant to indicate their ability to complete the Part or Work Order within the constraints of the current budget.

Warning messages will be displayed for the PennDOT PM when the Consultant's payroll amount on an invoice exceeds 50% and 75% of their budget for the Part/Work Order. A separate warning message is displayed if the payroll amount for the invoice exceeds 50% of the entire Part/Work Order budget. At the 75% warning, a workflow comment is required by the PennDOT PM to respond to the consultant's ability to complete the Part or Work Order within the current budget and to indicate if a supplement will be required.

Final Invoice

After all work to be performed by the consultant under the Agreement has been completed and deemed satisfactory in all respects by the IO Project Manager and accepted by PennDOT and, where applicable, by the FHWA, PennDOT will authorize payment of the consultant's final invoice.

The payment of the final invoice to the consultant for work and services under the terms of the Agreement does not waive the right of PennDOT to establish overpayments or adjustments disclosed by subsequent audits by PennDOT of the consultant's project records and cost accounts. PennDOT will notify the consultant of such amounts due and request a refund for the amount of the overpayment.

Lump Sum Method of Payment – The consultant shall be paid the Lump Sum amount as provided in the Agreement for the project as a whole or such parts thereof on which a Lump Sum is provided. The amount of the final invoice shall be the remaining amount due the Engineer after all prior partial and/or interim payments by PennDOT have been deducted from the Lump Sum amount as set forth in the Agreement.

Cost Per Unit of Work Method – The consultant will be paid a total fee in the amount of the number of PennDOT accepted Units of Work times the Unit Price or Prices set forth in the Agreement. The final invoice

shall be the amount of total accepted fee less the aggregate amount of the prior partial payments made to the consultant by PennDOT.

Cost Plus a Fixed Fee Amount Method – The consultant will be paid the amount of the fee computed in accordance with the procedure set forth for partial payments in these Specifications above, subject to a final audit of the Agreement and the determination of the consultant's total amount due. The final settlement will be the submission by the consultant of a Final Invoice in the amount of the audited amount due less the aggregate sum of the prior partial payments by PennDOT to the consultant. Where the total aggregate sum of the prior partial payments exceeds the amount of the final audited amount of fee, the consultant shall refund the overpayment amount to PennDOT.

Specific Rate of Compensation – The consultant shall be paid the accumulated earnings of the consultant's employees authorized by PennDOT to perform work less the amount of the aggregate total of partial payments by PennDOT to the consultant.

Invoice Submittal

A series of edit checks are performed by ECMS, including a check on the integrity of the data submitted. These edit checks may result in warning messages being attached to the invoice. If for any reason an invoice is rejected, that invoice cannot be resubmitted. The consultant will need to create a new invoice. Both successfully submitted and rejected invoices are displayed in the Invoice Inquiry.

The prime consultant can 'Reject/Revise' a subconsultant's invoice if minor changes are needed.

The consultant's invoice for progress payment will be reviewed and verified by the IO Project Manager and when found acceptable, will be approved by the IO Project Manager and presented to the Comptroller for payment. These progress invoices are merely partial payments and are subject to correction and adjustment as provided under the Agreement at the interim or final audit of the Consultant Agreement accounts and records. The current payments shall not bind PennDOT to the acceptance of any materials furnished or work done.

The IO Project Manager will be able to review invoice entry values, to-date reports, and user-entered comments online for any invoice. The IO Project Manager assigned to the Part/WO can choose one of the following options:

- Approve, or recommend for approval, the payment (including all underlying invoices)
- Reject an individual subconsultant invoice but approve, or recommend for approval, the payment
- Reject/Revise the invoice if minor revisions are needed
- Reject the prime invoice

If more than seven days elapses between the date the prime invoice is received and the date the IO Project Manager approves or rejects the payment, the invoice shows up in the work queue in ECMS for both the IO Project Manager and the IO Portfolio Manager.

Approved Payment

If a payment is deemed acceptable, the individual who approves the payment must have a signature authority card to approve a vendor's invoice for payment on file in the IT database

<https://dominoapps.penndot.pa.gov/SAUTH/SigningAuthority.nsf>

If the IO Project Manager does not have payment signature authority, a qualified individual in the IO verifies that the payment is technically accurate and recommends that the payment be processed.

After the project manager approves the invoice, the payment is created and transmitted to SAP for payment. SAP verifies that there are enough funds remaining in the WBS element/SPN. If there is not enough funds or there is other information that does not match SAP, an error will come back from SAP and the invoice payment status will display awaiting correction. Contact the IO fiscal officer to verify SAP and ECMS

information. After the necessary corrections have been made, the IO fiscal officer can resend the payment in ECMS. Once SAP accepts the payment, the status is changed to "Comptroller Review". After the comptroller approves the payment, the information is sent to Treasury for approval and payment. After treasury has cut the check or deposited the funds, the payment status goes to paid and the payment information is recorded.

Prompt Payment of Subconsultant/Subcontractor Invoices

In compliance with the Pennsylvania Contractor and Subcontractor Payment Act (CAPSA) and the federal Prompt Payment Act (PPA), when a subconsultant/subcontractor has performed in accordance with the provisions of the contract, the prime consultant is obligated to make prompt payment on the invoices. All monies received by the consultant for work and services furnished by a subconsultant/subcontractor must be paid in full to that subcontractor within fourteen calendar days of the date the prime consultant received payment from PennDOT. **It is the consultant's responsibility to ensure prompt payments to any and all subconsultants/subcontractors** in accordance with the Contractor and Subcontractor Payment Act (CAPSA), the Prompt Payment Act (PPA), and the project agreement terms and conditions.

Reject Prime Approved Payment

The IO Project Manager will be able to reject individual subconsultant invoices without rejecting the entire payment, or to reject or approve the payment as a whole.

If the prime invoice is rejected, the underlying subconsultant invoices comprising the payment are 'unlinked' and remain in Awaiting Supervising BP Submission status. When the prime submits their replacement invoice, the payment is recreated.

4.6.4 – Overhead Adjustment Invoice

For a consultant that has had a new overhead rate accepted, the consultant can generate a General and Administrative Overhead Adjustment report in ECMS. This report captures all invoices having invoice periods within the fiscal year in question for all Cost Plus Fixed Fee Parts, including invoices that have spanned the beginning and ending dates of the fiscal year.

When a consultant receives an audit report from PennDOT they may accept or contest the results. The consultant should contact the CMD to contest the provided audit report.

Once the CMD and the consultant have agreed to the Overhead Dollars Adjustment, the report will be finalized and the consultant issued a Tracking Number for further processing through an Overhead Adjustment invoice. The consultant must submit an Audit Adjustment invoice using the Audit Tracking number and Direct Payroll Dollars.

When payment of either an Overhead Adjustment or Audit Adjustment invoice would require more funds than are currently available for the targeted category of compensation, a Supplemental Agreement or Work Order Amendment will need to be processed prior to submission of the invoice for active agreements. This may be completed by selecting a labor task and using the overhead adjustment within the labor task to add the dollar amount necessary.

If the processing of an Overhead Adjustment or Audit Adjustment invoice would require more funds than are available in the Direct and Indirect Payroll category of compensation or WBS Element the IO will need to post money in SAP prior to processing of the invoice for expired agreements. For projects in final status, the IO will have to breakdown the agreement prior to posting money for invoicing.

4.6.5 – Agreement Close-Out

Consultant Agreements are terminated if any of the following occur:

- All of the work and services to be performed under the terms of the Consultant Agreement have been completed in a satisfactory manner,
- The time of completion stipulated in the Consultant Agreement for all Parts/WOs has expired. (Each IO should have written monitoring procedures which will preclude terminating a Consultant Agreement due to time expiring through no fault of the consultant.),
- A close-out Amendment or Supplemental Agreement is executed, or
- PennDOT cancels the Consultant Agreement in accordance with the terms of the Consultant Agreement.

Upon termination of the Consultant Agreement or any Part or WO thereof, the IO will process a final invoice (if required). This final invoice will be the IO Project Manager's notice to process other required documents as discussed below.

Agreement close-outs must be processed in a timely fashion.

Final Invoice

After the work to be performed by the Consultant under the Agreement has been completed and deemed satisfactory in all respects by PennDOT's Project Manager and accepted by PennDOT and where applicable by the FHWA, PennDOT will notify the Consultant in writing of its acceptance of the work as fulfilling the Agreement, or part of the Agreement. The prime consultant and subconsultants need to provide an invoice flagged "Final" for each Part or Work Order for which a NTP has been issued within fourteen (14) calendar days of receipt of PennDOT's acceptance of work. The final invoice may be submitted by the Consultant within one month of the previous invoice. If the last invoice did not include the required flag, the consultant must submit a no-cost invoice template flagged "Final". This final invoice will trigger the IO Project Manager to:

- a) complete and submit to the CMD an appropriate Certificate of Completion for federally funded agreements,
- b) complete final Consultant Evaluations for the prime and any subconsultants,
- c) arrange for the preparation of an SAP-8 encumbrance document which releases any remaining funds from their encumbrance in SAP; and
- d) verify that the Project Characteristics are complete.

A flow chart outlining the procedures for close out can be found in Appendix 4F – Procedures for Closing Out Electronic Parts/Work Orders.

If no work was done on a Part/Work Order, consultants will still need to submit a "final" invoice in order to close-out the agreement if NTP was given for the Part/Work Order.

4.6.6 – Certificate of Completion (Federally Funded Parts/Work Orders only)

In ECMS, the IO Project Manager completes all information on the Certificate of Completion including the information at the bottom of the form, otherwise the form will be returned for completion. The IO Project Manager then submits this Certificate to the District Executive for review and approval. The Certificate is then forwarded to the CMD Chief for approval. The completed Certificate resides in ECMS under the agreement Part/Work Order.

PennDOT's goal is to have the Certification of Completion finished within six months from final invoice.

4.6.7 – Consultant Evaluations

Consultant Evaluations are performed at the Part or Work Order level for the prime and every subconsultant for that Part or Work Order. These evaluations are a valuable management tool for the evaluation of the current consultant work and services, as well as selection for future work and services. The consultant(s) available for evaluation for a particular Part or Work Order are dependent on the respective Consultant Hierarchy in the Technical Proposal.

An Interim Consultant Evaluation can be processed at anytime during the life of the Part or Work Order. However, an Interim Consultant Evaluation must be completed if, at any time, a consultant's performance fails to meet expectations for the part or work order. A Final Consultant Evaluation must be processed for each prime consultant at the completion of any Part or Work Order. The "Final" or "Interim" radio buttons indicate the type of evaluation being performed.

Upon creation of the evaluation by the IO Project Manager, weights must be assigned for each evaluation criteria. Weights are established on a one to ten basis based on importance for this project, with ten being the most important. If criteria does not apply for the project, use the ECMS defaulted "N/A" weight.

The following are required criteria on all ECMS consultant evaluations:

1.6 - Project Manager tracks the contract budget versus the invoiced amounts to ensure work efforts are commensurate.

1.10 - Consultant meets all milestones/submissions as established in the contract/ASTA schedule.

2.1 - Consultant prepares and adheres to a Quality Assurance/Quality Control Plan.

2.3 - Design deliverables are accurate, and free of errors and inconsistencies. Consultant satisfactorily corrects identified inconsistencies or errors to ensure compliance with Department, and as applicable, FHWA specifications

After the weights are established, the consultant project manager must acknowledge the evaluation weights prior to the NTP of parts or the creation of a legal work order.

Insert the corresponding scores upon receipt of a final invoice. Descriptions regarding appropriate values for the scores are shown on the rating description sections of the evaluation form.

When completing the Consultant Evaluation the conduct of the consultant team in regards to meeting schedules, completing work on time, and new ideas brought to the project should be considered.

A general evaluation for each subconsultant must be completed on the prime consultant's final evaluation.

The IO Project Manager completes the evaluation form and submits it to the Portfolio Manager or the ADE for Department Review. If the evaluation is considered acceptable, it is then submitted to the consultant for their review and comments. For "Professional Fees", only designate the range that includes the final invoiced amount for the consultant being evaluated for the Part being evaluated. The completed evaluation must be submitted to each consultant within thirty days of the receipt of an acceptable final invoice. Notification of the completed evaluation will appear in the consultant's work queue. The consultant logs onto the system and submits comments, if necessary, and acknowledges the evaluation. The process is then complete. If the consultant does not respond within fifteen days, the system automatically finalizes the evaluation without comments by updating the status to "Complete".

Complete evaluations remain available for viewing. Authorized PennDOT staff can view all consultant Evaluations. Consultants can only view the Evaluations for their firm.

4.6.8 Semi Annual Invoice Audit

The CO CMD office (Consultant Agreement Unit) will run a report on approved invoices every six months to determine any invoices that are outside the set parameters of probability for the firm's budget. The Districts and the Consultant will be contacted and the Consultant will be given a chance to provide justification for expenses within budget. If found outside their budget the firm will be instructed to repay the Department.

Chapter 5 – Consultant Agreement Support

5.1 – Introduction

The Legal Agreement is a binding legal instrument. This chapter provides information to avoid issues, or direction if such issues cannot be avoided.

5.2 – Confidentiality

Certain information concerning consultant information is considered confidential. PennDOT employees and consultant employees, who represents PennDOT and who are engaged in activities with exposure to confidential information, are required to sign a confidentiality certification. See Appendix 5A Confidentiality Certification.

The following is a non-inclusive listing of items which are considered confidential:

- Consultant Quality Plan
- Items in the Consultant Selection procedure (Section 3.4.2)
 - Shortlisted Consultants – Until Approved in ECMS
 - Final Ranking – Until Approved in ECMS
- Consultant Overhead rates
- Department Work-hour Estimate

For PennDOT employees, this certification must be signed annually and copies kept by the employee and the employee's supervisor. For consultant employees, this certification must be signed by each employee assigned on an agreement that gives the consultant access to confidential information, and copies kept in the agreement folder, by the PennDOT PM, and by the consultant.

NOTE: A consultant is prohibited from assisting PennDOT or a municipality in the review of SOI, Technical Proposal, or any items associated with the final ranking of a consultant.

5.3 – Records and Documentation Retention

5.3.1 – Consultant Requirements

Consultants should maintain records and documentation as required in the legal agreement.

5.3.2 – PennDOT Requirements

The procurement and administration of a Consultant Agreement have financial and legal repercussions and must be appropriately documented by the IO Project Manager.

ECMS and EDMS will maintain electronic files for their various screens. Consultant Agreement records and documentation not included in ECMS must be maintained by the IO Project Manager in the project files and be readily available. For non-federal projects, refer to the current PennDOT Records Retention and Disposition Schedule for retention of records. For federal aid projects, the minimum retention time for documentation is three years following the federal aid project's final voucher or the current PA Office of Administration Records Retention and Disposition Schedule whichever is longer. These records and documentation include, but are not limited to:

- Initiating Organization (IO) Selection Committee's rating sheets, review comments, recommendations, and other material pertinent to the selection process
- Technical review verification/comments on the SOW and/or technical proposal
- Minutes of IO Selection Committee's action
- Consultant Agreement correspondence/approvals
- Negotiation Position Memorandum (will be kept in CMD for Agreements, Work Orders, and Supplements created by CMD)

5.4 – Disadvantaged Business Enterprise Participation

This section describes the procedures concerning Disadvantaged Business Enterprise (DBE) participation in federally-assisted Consultant Agreements. Consistent with Title 49 Code of Federal Regulations Part 26 (Part 26), all entities shall be referred to as DBEs.

5.4.1 – Good Faith Effort to Obtain DBE Participation

The following is a list of types of actions that should be considered as part of the consultant's Good Faith Effort (GFE) to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive (for more guidance on GFE requirements, refer to 49 CFR Part 26 Appendix C). Other factors or types of efforts may be relevant in appropriate cases.

- A. Efforts made to conduct market research to identify small business consultants and solicit through all reasonable and available means (ECMS Consultant Qualifications file) the interest of all Pennsylvania Unified Certification Program (PA UCP) DBEs who have the capability to perform the work of the agreement. The consultant must solicit this interest within sufficient time (at least 5 calendar days before the Statement of Interest due date) to allow the DBEs to respond to the solicitation. The consultant must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out agreement work items into economically feasible units to facilitate DBE participation, even when the prime might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the work and services required in a timely manner to assist them in responding to a solicitation.
- D. Negotiating
 - a. Negotiating in good faith with interested DBEs. It is the consultants' responsibility to make a portion of the work available to DBE subconsultants and suppliers and to select those portions of the work or material needs consistent with the available DBE subconsultants and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes a written log or document that includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the required work and services for the work selected for subconsulting; and evidence as to why additional agreements could not be negotiated for DBEs to perform the work.
 - b. A consultant using good business judgment should consider a number of factors in negotiating with subconsultants, including DBE subconsultants, and should take a firm's capabilities as well as agreement goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet the agreement DBE goal, as long as such costs are reasonable. Also, the ability or desire of a

prime to perform the work of an agreement with its own organization does not relieve the consultant of the responsibility to document a GFE.

- c. Another practice considered an inadequate GFE is the rejection of a DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime consultant to accept unreasonable quotes in order to satisfy the contract DBE goal.
- E. Thoroughly investigating the capabilities of DBEs and determining if they are qualified by using sound reasoning. The firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the firm's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or firm.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of the Department's DBE Supportive Services Center; services of the Department's SBE Supportive Services Center; services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

5.4.2 – DBE Certification

Only DBEs certified by the PA UCP count toward the DBE Goal.

Certifying participants in the PA UCP are:

- Allegheny County's Department of Minority, Women and Disadvantaged Business Enterprises
- Philadelphia International Airport's DBE Program Office
- Port Authority of Allegheny County's Office of Equal Opportunity
- Southeastern Pennsylvania Transportation Authority's DBE Program Office
- PennDOT's Bureau of Equal Opportunity

Consultants interested in obtaining DBE certification should complete a Uniform Certification Application to any of the certifying participants listed above. Consultants requiring additional information about the certification process or the PA UCP should contact BEO at 717-787-5891 or 1-800-468-4201.

All DBEs used to meet the DBE agreement goal for a PennDOT project requiring DBE participation must be certified on the date that the SOI is due as indicated in the advertisement. DBEs must continue to hold DBE certification at the time of price proposal submission date to count toward the DBE Goal.

If a DBE is deemed ineligible and an agreement or subcontract has not been executed, the ineligible firm does not count toward the agreement goal or the overall goal. If an agreement or subcontract has been executed before the DBE is notified of its ineligibility, PennDOT or the consultant may continue to use the firm and will continue to receive credit for the work toward the Agreement goal.

If a DBE firm becomes ineligible as a DBE after selection, yet prior to agreement execution, the prime consultant will be expected to make a Good Faith Effort to substitute another certified and eligible DBE firm.

For professional work and services, DBE crediting will be made only when the work and services have been performed by a DBE subconsultant. Costs for professional work and services included in a DBE consultant's

price proposal as direct costs of work and services by others should not count as DBE participation in the Agreement unless the direct cost is incurred by a certified DBE consultant.

If the prime consultant is a certified DBE, all costs except for those realized by non-DBE certified subconsultants will count toward the DBE goal.

5.4.3 – Records of DBE Participation

The prime consultant must keep records of DBE participation levels for the original Consultant Agreement and each Supplemental Agreement, and provide these to PennDOT when requested or required. The final DBE participation amounts will be determined through an audit of the prime consultant, if applicable.

The CMD will submit reports to BEO, as required, for purposes of complying with Part 26 record-keeping requirements.

The CMD will maintain each fiscal year's cumulative totals of executed DBE agreement amounts.

5.4.4 – Monitoring of DBE Consultants

Since DBE Participation in Consultant Agreements must be reported under Part 26, PennDOT must monitor the DBE participation in Consultant Agreements on a monthly basis and must ensure that DBE consultants are performing and controlling all work and/or services committed to in the Consultant Agreement. The DBE Information in ECMS may be used to aid the IO in monitoring the DBE participation.

Each IO will monitor each active Consultant Agreement for DBE participation. In the event that an IO uncovers under-utilization of DBEs by a consultant in violation of the Consultant Agreement, the IO should direct the consultant to initiate an Appendix 3D DBE Monitoring Form to evaluate the Good Faith Effort of the prime consultant.

In the event that there is an indication that the consultant DBE is not performing or controlling work, appropriate personnel from the IO will immediately make an unannounced visit to the office(s) of a given DBE consultant to determine whether the DBE consultant is, in fact, performing and controlling the work and services identified in the Proposal attached to the Consultant Agreement. The consultant community should expect these visits to occur during the course of doing business with PennDOT.

Commercially Useful Function (CUF)

It is important that DBE consultants, perform a Commercially Useful Function (CUF) as required by Part 26. PennDOT is responsible for ensuring that every DBE conducting work on a federal-aid project is performing a CUF as that term is defined in Section 26.55(c) of Part 26. This Section provides that a DBE performs a CUF “when it is responsible for execution of the work of the agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.”

PennDOT is intent on fulfilling its regulatory mandate to ensure that every DBE performs a CUF. Since the prime consultant is ultimately responsible for ensuring that the project's DBE goal is satisfied, it must also ensure that the DBE firms being utilized are performing a CUF under Part 26.

All consultants and subconsultants must be cognizant that, as a condition of receiving federal funds, PennDOT is required to ensure that all consultants and subconsultants comply with Part 26. Failure to comply with this regulation may jeopardize federal funding. Therefore, in order to assist Pennsylvania consultants in their efforts to comply fully with our contract provisions and the federal regulations, the following reminders are being provided.

The following two examples illustrate situations where a CUF is not being performed. Engaging in either of these practices may, at a minimum, result in the value of the work being excluded from the prime consultant's DBE goal.

Example 1	A DBE subconsultant's project workforce is made up of individuals previously employed by the prime consultant or another subconsultant on that project; and it is apparent that the employees have been switched solely for the purpose of meeting the DBE goal. Individuals previously employed by the prime consultant or another subconsultant on that assignment or project cannot be claimed for DBE credit if they switched companies for DBE goal purposes.
Example 2	Work being counted toward the DBE goal is being performed by the prime consultant or a non-DBE subconsultant without a Good Faith Effort determination.

Consultants and their DBE subconsultants that engage in any of the above-referenced practices will be required to take corrective or remedial action at the direction of PennDOT. PennDOT will schedule a meeting at which the DBE subconsultant and the prime consultant will be called upon to provide documented evidence that the DBE subconsultant is performing a CUF consistent with the mandate of Section 26.55(c)(4). If PennDOT has reason to presume that a DBE is not performing a CUF, PennDOT will afford the DBE and the prime an opportunity to present evidence to rebut this presumption. The following may transpire:

- Immediate suspension of the work;
- Loss of DBE project goal credit; and/or
- Investigation by the United States Department of Transportation (USDOT), USDOT Office of the Inspector General, and/or the Pennsylvania Office of Inspector General.

Furthermore, in certain situations, PennDOT may:

- Revoke DBE certification; and/or
- Pursue suspension or debarment of the DBE firm, the prime consultant, and/or any subconsultant(s) involved.

To ensure that the above CUF requirements are being met by all DBEs, the IO Project Manager shall monitor the DBE activities throughout the life of the agreement.

If, at any time, situations indicating non-compliance occur, the IO Project Manager should complete an Appendix 5B DBE Commercially Useful Function (CUF) Report, notify the prime consultant that corrective action is required, and forward the CUF Report to the CMD Chief. The CMD Chief will review the form with input from the IRT, FHWA, and Office of Chief Counsel, as necessary. The CMD Chief will forward the Report to the BEO DBE/Title VI Division for their review and any further course of action. This process must be followed each time a non-compliant situation occurs on an agreement.

PennDOT's decision may be subject to review by the FHWA but is not administratively appealable under Part 26.

If no indications of non-compliance occur, the IO Project Manager is still required to complete an Appendix 5B DBE Commercially Useful Function (CUF) Report at least once during the life of each Part or Work Order. Typically this form can be completed within ten days of the DBE firm starting work. This report should be kept in the project file.

5.4.5 – DBE Good Faith Effort Approval Process for Consultant Agreements

The Regulatory Mandate: Good Faith Effort Tasks, Reference Documents, and Procedures

In accordance with Part 26, PennDOT is required to establish procedures addressing Good Faith Effort (GFE) in those instances where DBE agreement goals have been imposed. Section 26.53 of Part 26 requires that the awarded consultant make a GFE to meet the DBE agreement goal. Section 26.53(a) states that a GFE is established by documenting that the DBE agreement goal has been met or by documenting that the consultant made a GFE to meet the goal even though it did not succeed.

Each case is unique, and there is no *standard* checklist or formula for making GFE determinations. Institutional guidance issued by the United States Department of Transportation (USDOT) Office of General Counsel relating to GFE is set forth in Section 26.53 and Appendix A of Part 26. Appendix A provides guidance concerning GFE and outlines factors to be used in a GFE analysis. The regulatory text of Section 26.53 as well as the regulatory analysis or preamble to Section 26.53 and Appendix A constitute the primary reference documents used to develop PennDOT's GFE process and to engage in GFE determinations or analyses. Additional USDOT guidance is also included in one of the questions and answers that can be viewed on the official DBE program website at <http://osdbu.dot.gov/DBEProgram/dbeqna.cfm>.

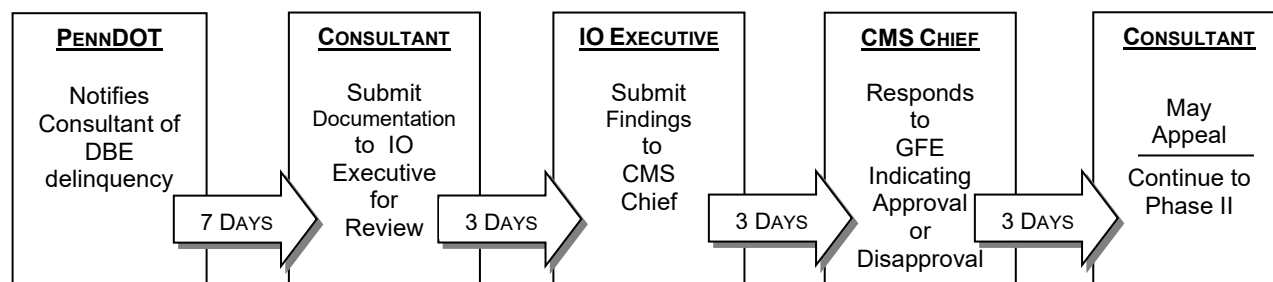
Since each of the three DOT documents relates to GFE reviews, they are viewed by PennDOT as part and parcel of PennDOT's GFE review program document.

The GFE review process is triggered when the DBE goal has not been met:

1. Prior to agreement execution, for Project Specific Agreement
2. Prior to execution of a Supplement or Work Order

In accordance with [Section 3.6.9](#), the prime consultant is responsible for completing Appendix 3D DBE Monitoring Form when the DBE Goal is not met for the entire Agreement. This form, and any additional information, should be submitted to the IO Project Manager by the Price Proposal due date.

Phase I – Good Faith Effort Procedures: The Initiating Organization Executive (IO Executive) and Contract Management Division Chief Review



If the DBE goal has not been met during the Price Proposal Review as indicated in [Section 3.6.9](#), the prime consultant is responsible for initiating an Appendix 3D DBE Monitoring Form and submitting justification of its GFE in writing to the IO Project Manager. This Form should be submitted by the Price Proposal due date. If, however, the consultant neglects to submit by this date, a grace period of seven calendar days from the initial notification from PennDOT of the submitted price proposal not meeting the DBE goal will be allowed.

If this information is not submitted within this stated timeframe, the following consequences will be enacted:

- A. Prior to agreement execution – the consultant will be notified that the agreement review is concluded, and PennDOT will be pursuing the agreement with the next ranked firm.
- B. Prior to execution of a Supplement or Work Order – sanctions will be enforced as indicated in [Section 5.4.7](#).

The IO Project Manager will coordinate review of the submitted documentation with the IO Executive (DE, or designee, for District Agreements or appropriate Bureau Director, or designee, for Central Office Agreements).

Upon review of the submitted GFE documentation:

- If the IO Executive approves the Form, the Form should be maintained in the agreement file, and a copy of the approved form should be forwarded promptly to the consultant and the CMD Negotiator. The GFE process is ended and the agreement review will continue between the consultant and PennDOT.

- If the IO Executive finds that the consultant does not appear to be acting in Good Faith, the form should be forwarded to the CMD Chief with their findings and recommendations within three calendar days of receipt from the consultant, and the GFE process will continue.

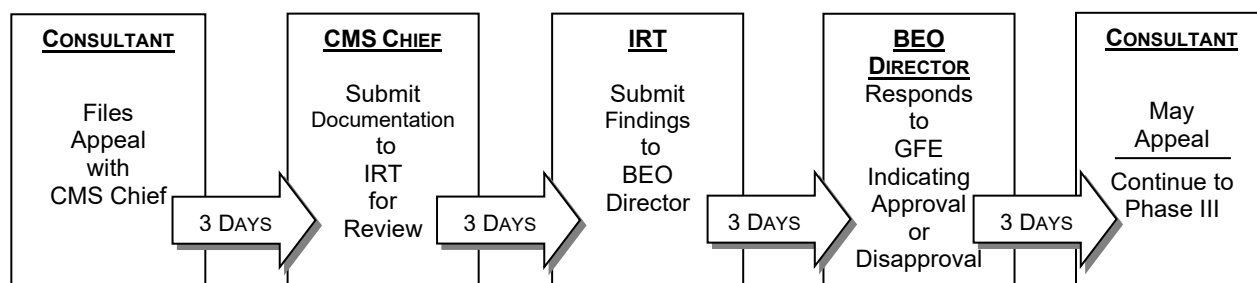
Within an additional three calendar days, the CMD Chief will return the completed form to the prime consultant indicating approval or disapproval of the GFE.

If the CMD Chief approves the GFE, agreement review will continue between the prime consultant and PennDOT.

In the event that the CMD Chief disapproves the GFE, the prime consultant can accept the CMD Chief's determination, whereas, the consequences noted above will be enacted, or the prime consultant may elect to file an appeal. This appeal must be sent to the CMD Chief, in writing, within three calendar days of notification of the disapproval of the GFE.

Upon receipt of the appeal, Phase II of the GFE procedures will go into effect.

Phase II – Good Faith Effort Procedures: The Interdisciplinary Review Team Review



When there is a request for a GFE review appeal, PennDOT's Interdisciplinary Review Team (IRT), comprised of PennDOT personnel from the Bureaus of Equal Opportunity (BEO), and Project Delivery (BODD) will be tasked with reviewing the submitted documentation. When necessary, personnel from the impacted Engineering District and other individuals familiar with PennDOT's consultant agreement process are consulted and asked to assist in the review process. Neither the CMD Chief nor any previously involved IO Executive will participate in the Phase II determination. The IRT will evaluate the prime consultant's GFE in accordance with the regulatory references set forth above in this procedural guideline, as well as, the GFE provisions indicated in [Section 5.4.1](#).

Within three calendar days from the Appeal submission, the CMD Chief will forward all documentation concerning the GFE to the IRT. The IRT will be limited to this documentation submitted for their review. However, if additional information is needed and a phone contact provided, the IRT may elect to call the prime consultant for clarification. If the prime consultant cannot be reached, the IRT will continue to process the GFE with the information previously submitted.

Upon review of the submitted documents, the IRT will forward its findings and recommendations to the BEO Director (BEO Director or designee) for approval or disapproval within three calendar days.

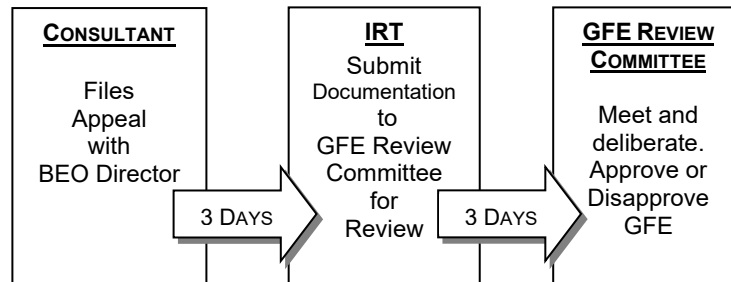
Within an additional three days, the BEO Director will send a letter to the prime consultant indicating approval or disapproval.

If the BEO Director approves the GFE, the GFE process is justified.

In the event that the BEO Director disapproves the GFE, the prime consultant can accept the BEO Director's determination, whereas, the consequences noted in Phase I will be enacted, or the prime consultant may elect to file an appeal. This appeal must be sent to the BEO Director, in writing, within three calendar days of notification of the disapproval of the GFE.

Upon receipt of the appeal, Phase III of the GFE procedures will go into effect.

Phase III – Good Faith Effort Procedures: Administrative Reconsideration: The Good Faith Effort Review Committee



In the event that the BEO Director disapproves the GFE submission of the prime consultant, the prime consultant will be afforded an opportunity for administrative reconsideration before PennDOT’s Good Faith Effort Review Committee (GFE Review Committee). Part 26 Section 26.53 (d)(1) refers to this procedure as “administrative reconsideration” and states that PennDOT’s decision on reconsideration must be made by an official who did not take part in the original determination. Consistent with this provision, no one involved in the Phase I or Phase II review process will vote in the Phase III determination. The Committee will meet on an as-needed basis and will approve or disapprove the submission.

Within three calendar days from the Appeal submission, the IRT will forward all documentation concerning the GFE to the GFE Review Committee. This information will include the IRT’s findings and recommendation and the BEO Director’s decision.

The GFE Review Committee will meet and deliberate within three calendar days of receipt of the GFE documentation.

The GFE Review Committee will be comprised of three members. The Deputy Secretary for Highway Administration or designee will serve as Chairperson. The BODD Director and the Deputy Secretary for Administration or their designee(s) will serve as the remaining members. An attorney from the Office of Chief Counsel will serve as legal adviser to the GFE Review Committee but will not participate as a decision maker. The BEO Director will attend GFE Review Committee meetings but will not serve as a member due to the separation of functions requirement of Section 26.53.

Each Committee member will evaluate the GFE submission in accordance with the GFE provisions indicated in [Section 5.4.1](#), as well as the applicable regulatory guidelines for DBE GFE submissions. The evaluation will consider the record evidence as well as Part 26, Appendix A, Section 26.53, and the institutional guidance issued by USDOT’s Office of General Counsel in the form of an official question and answer which allows PennDOT to consider the consultant’s track record in using DBEs as it evaluates GFE.

The prime consultant will be notified in writing, and invited to attend the meeting. The prime consultant will be advised that the purpose of attending the meeting will be to clarify documentation previously submitted to PennDOT. The prime consultant will not be authorized to submit new GFE written documentation or any other evidence not previously provided. The prime consultant will be expected to address questions posed by Committee members and will have the opportunity to clarify points resulting from questions asked or from review of its GFE submissions. The prime consultant will then be excused and the Committee will deliberate in an executive session. The legal adviser will participate in the executive session to address regulatory questions only and not as a voting member.

At the conclusion of the executive session and deliberation, the GFE Review Committee will vote to approve or disapprove the GFE submission. The decision will result from a simple majority vote. The majority must reach a consensus as to the reason for accepting or rejecting the consultant’s GFE.

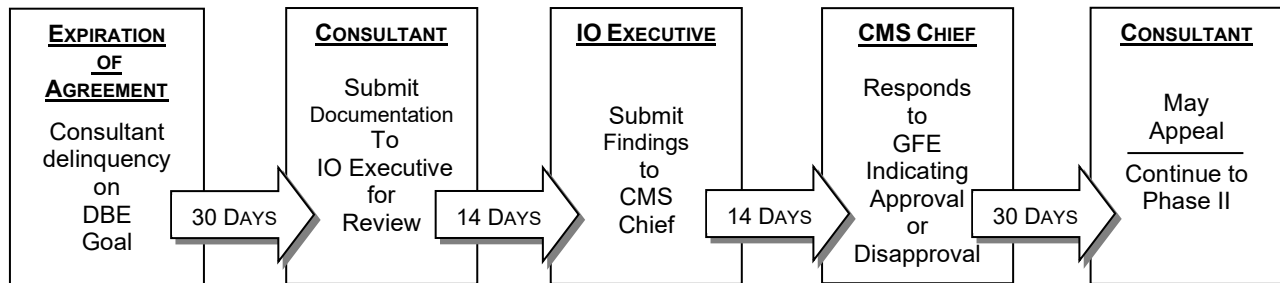
If the GFE Review Committee approves the GFE, the GFE process is justified.

In the event that the GFE Review Committee disapproves the GFE, the following consequences will be enacted:

- Prior to agreement execution – the consultant will be notified that the agreement review is concluded, and PennDOT will be pursuing the agreement with the next ranked firm.
- Prior to execution of a Supplement or Work Order – sanctions will be enforced as indicated in [Section 5.4.7](#).

5.4.6 – Evaluation of DBE Goal Attainment for Consultant Agreements

Phase I – Evaluation of DBE Goal Attainment: The Initiating Organization Executive (IO Executive) and Contract Management Division Chief Review



At the completion of the agreement, if the DBE goal has not been met, the prime consultant must submit Appendix 5C Evaluation of Overall DBE Goal Attainment Notice (Notice), and any previously submitted GFE documentation in writing to the IO Executive (DE, or designee, for District Agreements or appropriate Bureau Director, or designee, for Central Office Agreements). This Notice must be received by PennDOT within thirty calendar days after the expiration of the engineering agreement.

If this Notice is not submitted within the stated timeframe, sanctions will be enforced as indicated in [Section 5.4.7](#).

Upon review of the Notice, the IO Executive will forward its findings and recommendations to the CMD Chief for approval or disapproval within fourteen calendar days.

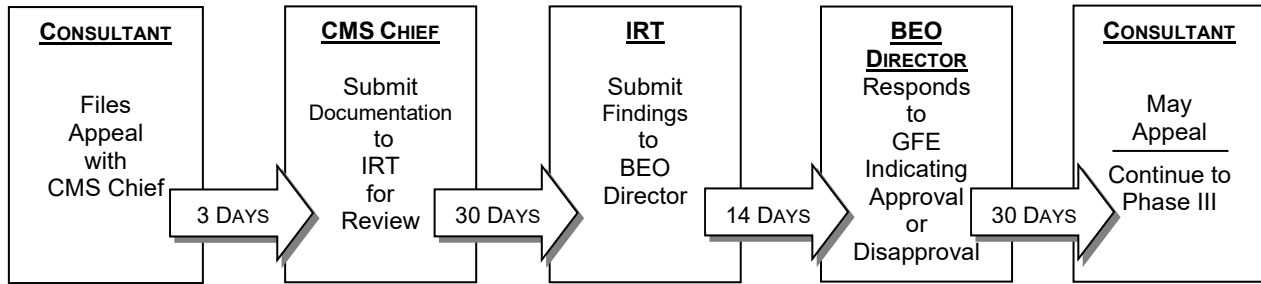
Within an additional fourteen calendar days, the CMD Chief will respond to the prime consultant indicating approval or disapproval of the Notice.

If the CMD Chief approves the Notice, the Evaluation is justified and the process ended.

In the event that the CMD Chief disapproves the Notice, the prime consultant can accept the CMD Chief's determination and the imposition of the determined sanctions, or the prime consultant may elect to file an appeal. This appeal must be sent to the CMD Chief, in writing, within thirty calendar days of notification of the disapproval of the Notice.

Upon receipt of the appeal, Phase II of the Evaluation of DBE Goal Attainment procedures will go into effect.

Phase II – Evaluation of DBE Goal Attainment: The Interdisciplinary Review Team Review



Within three calendar days from the Appeal submission, the CMD Chief will forward all documentation concerning the Evaluation to the IRT, as defined in [Section 5.4.5](#).

In the event that the IRT requires clarification regarding the Notice submitted by the consultant, the IRT is authorized to contact the prime consultant requesting clarification. It is anticipated that such communications will be infrequent and will be limited to discussions related to written documentation previously submitted to PennDOT. The IRT must receive the prime consultant's response within three calendar days of the date of the IRT's request for it to be considered in their evaluation.

Upon review of the submitted documents, the IRT will forward its findings and recommendations to the BEO Director (BEO Director or designee) for approval or disapproval within thirty calendar days from the Appeal Submission.

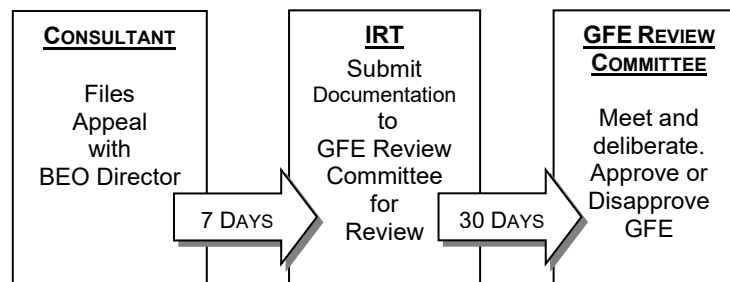
Within an additional fourteen days, the BEO Director will respond to the prime consultant indicating approval or disapproval.

If the BEO Director approves the Notice, the Evaluation is justified and the process is concluded.

In the event that the BEO Director disapproves the Notice, the prime consultant can accept the BEO Director's determination and the imposition of the determined sanctions or the prime consultant may elect to file an appeal. This appeal must be sent to the BEO Director, in writing, within thirty calendar days of notification of the disapproval of the Notice.

Upon receipt of the appeal, Phase III of the Evaluation of DBE Goal Attainment procedures will go into effect.

Phase III – Evaluation of DBE Goal Attainment: Administrative Reconsideration: The Good Faith Effort Review Committee



Within seven calendar days from the Appeal submission, the IRT will forward all documentation concerning the Evaluation to the GFE Review Committee, as defined in [Section 5.4.5](#). This information will include the IRT's findings and recommendation and the BEO Director's decision.

The GFE Review Committee will meet and deliberate within thirty calendar days of receipt of the documentation.

If the GFE Review Committee approves the Evaluation, the process is justified.

In the event that the GFE Review Committee disapproves the Evaluation, sanctions will be determined in indicated in [Section 5.4.7](#).

5.4.7 – Good Faith Effort Sanctions

In coordination with the Office of Chief Counsel, the CMD Chief, IRT, or the GFE Review Committee will determine necessary sanctions for unwarranted deficiencies in the DBE agreement goal. Depending on the situation, these sanctions may necessitate action up to and including suspension or debarment. The decision will be set forth in a letter sent to the prime consultant. The decision letter will be prepared by the legal adviser and will be signed by the Committee's Chairperson. Consistent with Part 26 Section 26.53, the Committee's decision is not administratively appealable. All decisions of the Committee are final and binding.

5.4.8 - NAICS codes with DBE Commitment Information

All Federally-Funded agreements require DBE firms to include the NAICS code(s) which correspond(s) to the scope of work they will be performing on the project in the price proposal. Consultants must select appropriate NAICS codes from the menu provided in the ECMS Price Proposal. PennDOT will verify DBE firms NAICS code(s) accuracy per the PA Unified Certification program website.

5.4.9 - DBE Termination Notice Requirement

Obtain approval from PennDOT before substituting a DBE firm or making any change to the DBE Participation listed on the approved DBE Commitment. A DBE firm must be given written notice from the Prime Consultant when the Prime Consultant wishes to terminate them including reasons why. A DBE firm is afforded five (5) calendar days to respond to the written notice with reason(s) they may object to removal. This notice along with the DBE firm's response must be included with the request to substitute. The Prime Consultant must identify substitute DBEs or submit to PennDOT a GFE within seven (7) calendar days from receiving approval from PennDOT to terminate a DBE. If submitting a Good Faith Effort, documentation must include (1) a statement of efforts made to negotiate with DBEs for specific work, including the names, addresses, telephone numbers, and emails of those DBEs that were contacted; (2) the time and date each DBE was contacted; (3) a description of the information provided to DBEs regarding plans and specifications for portions of the work to be performed; and (4) an explanation of why an agreement between the Prime Consultant and DBE was not reached. Written approval to terminate a DBE must be received from the DBE IRT.

5.5 – Stop Work Notification

In the event that the consultant's performance is unsatisfactory, or it is deemed in the best interest of PennDOT to cease work and services on a project, the IO Project Manager will issue a written stop work notification to the consultant. The consultant may not proceed with work and services on the project until the ADE/Bureau Director provides a subsequent authorization to proceed. If it is determined to be in the best interest of PennDOT to stop or terminate the Consultant Agreement, PennDOT will do this in compliance with the terms and conditions indicated in Publication 442. The IO must contact the CMD Chief to evaluate the options.

5.6 - Violation or Breach of Contract

If a consultant or subconsultant violates or breaches contract terms and conditions, the CMD Chief must be contacted by the IO. The IO, DE, or Bureau Director must prepare a letter to the consultant listing the violations or breach of contract terms.

Based upon the level of violation, the CMD Chief will contact OCC for further actions

5.7– Costs Incurred Outside the Legal Contract

No costs for work or services included in a Legal Agreement, Work Order, or Supplement can be incurred by the Consultant prior to NTP or beyond the expiration date. No costs for work or services outside a legal Agreement, Work Order, or Supplement can be incurred.

The Consultant is prohibited from incurring costs for work outside the terms and conditions of the agreement, even if such costs are incurred based on verbal directions or instructions that may have been given by a PennDOT representative. Similarly, Subconsultants are prohibited from incurring costs for work outside the terms and conditions of the agreement, even if such costs are incurred based on directions or instructions that may have been given by a Prime representative. Directions or instructions for work, services, or materials, not provided for in the Agreement, issued by any PennDOT official/employee or other Consultant will not be binding on nor will PennDOT be liable for payment for the work or service.

Any such work or materials which may be done or furnished by the Consultant shall be at the Consultant's risk, cost, and expenses in accordance with Publication 442, Specifications for Consultant Agreements for Project Development Services. The CO CMD office (Consultant Agreement Unit) will run a report on approved invoices every six months to monitor spending in relation to legal agreements (see Section 4.6.8).

No one within PennDOT has the authority to direct a Consultant to perform work outside of a fully executed Agreement, Work Order or Supplement. In cases where a PennDOT representative directs the Consultant to perform work without an agreement, the responsible individual may be subjected to disciplinary action.

If a Consultant incurs costs outside of the constraints of its Legal Agreement, Work Order, or Supplement, i.e. works prior to or after the contract time, or incurs costs beyond Category of Compensation limitations for a particular firm, invoices requesting these type of costs cannot be processed by PennDOT.

In these cases, IO Project Managers are advised to contact the CMD Chief. The CMD Chief can provide the Consultant with the various avenues available to rectify the situation.

5.8 – Design Error Process

This section establishes a procedure to identify, investigate, and document errors, mistakes, and omissions (hereinafter referred to as “design errors”) in consultant-prepared construction plans, right-of-way plans and contract documents and to determine and document the extent of consultant responsibility for the cost of plan revisions and added construction or right-of-way costs resulting from design errors. A design error is a design flaw presented by the consultant in a set of plans, specifications, contract documents or design computations as a result of negligent engineering or negligent document preparation. Negligent engineering and/or negligent document preparation is a failure to meet the standard of reasonable care, skill and diligence that an engineering professional would ordinarily exercise under similar circumstances. The initial determination of a design error must be made by a Professional Engineer.

5.8.1 – Policy

PennDOT will attempt to recover all PennDOT costs incurred that are determined to be the responsibility of a consultant.

5.8.2 – Procedures

Detailed procedures for obtaining reimbursement for design errors and responsibility of each party are as follows:

DESIGN ERROR DISCOVERED BEFORE CONTRACT LETTING

Design errors that are discovered prior to contract letting are expected to be corrected by the consultant at no additional costs to the Department.

District Project Manager

At the first indication of a potential design error, the District Project Manager, shall notify the District Portfolio Manager. The Project Manager will document the problem including a description and consequences of the potential design error. The Project Manager shall include a description of any immediate action recommended to reduce the costs of the problem considering consultant non-billable corrections or redesigns. The name and title of the consultant's representative will be a part of the required documentation. If the consultant refuses to correct the potential design error at no cost to PennDOT, then the Project Manager will forward the documentation to the District Portfolio Manager, the Office of Chief Counsel and to the Chief of the Contract Management Division (CMD Chief) to determine appropriate action.

District Portfolio Manager

The District Portfolio Manager shall review the files, with consultation with appropriate PennDOT personnel, and determine whether the Consultant Engineering Firm appears to have been negligent in the performance of the engineering work. The District Portfolio Manager shall notify the consultant verbally of the alleged design error and confirm the notification in writing to the consultant. The consultant shall be instructed that it may not bill time to PennDOT to correct the alleged design error. If the consultant refuses to participate in a solution of the alleged design error, the District Portfolio Manager shall document this information and advise the Assistant District Executive – Design (ADED) and the CMD Chief. The ADED shall contact the Office of Chief Counsel to determine any legal remedies.

DESIGN ERROR DISCOVERED AFTER CONTRACT LETTING

Inspector-in-Charge

At the first indication of potential design error, the Inspector-in-Charge shall notify the District Assistant Construction Engineer (ACE). The Inspector-in-Charge shall immediately document such notification in the project file. The Inspector-in-Charge shall alert the inspection staff that detailed documentation will be required on the work performed.

The Inspector-in-Charge shall prepare a report including a description of the consequences of the error. The Inspector-in-Charge shall forward this memo to the ACE. The memo shall include a description of any immediate action taken to reduce the costs of the error and all decisions, descriptions of work, photographs and records of labor, materials and equipment. The Inspector-in-Charge shall continue to document the consequences of the error.

Assistant Construction Engineer

The ACE shall immediately notify the ADE – Construction (ADEC). The ACE shall, as soon as possible, after notification, visit the job site to investigate the problem. The ADEC will determine what other individuals should be present during the job visit.

Assistant District Executive – Construction

The ADEC shall notify the ADED, the District Executive (DE) the CMD Chief, the Office of Chief Counsel and the Federal Highway Administration, if appropriate. The Federal Highway Administration shall be notified if the project is on the National Highway System. The ADEC, the DE, a representative of the Office of Chief Counsel and the CMD Chief shall determine an appropriate Department Professional Engineer (P.E.) to review the documentation to determine if the consultant has been negligent. This Department P.E. shall conduct a review adequate to enable the Department P.E. to sign an affidavit alleging professional negligence should legal action become necessary.

Assistant District Executive – Design

ADED or designee shall verbally notify the consultant of the alleged design error and confirm the notification in writing to the consultant. The ADED shall request that the consultant participate in developing a solution in cooperation with the PennDOT Staff, at no cost to PennDOT. Corrective action should not be taken prior to notifying the consultant unless the DE determines safety issues warrant immediate action.

It is essential that the consultant be notified of the alleged design error and that they are given the opportunity to participate in the solution. If this step is not followed, the consultant could contest the solution and contend that they could have recommended a solution that would have minimized the cost of the corrective action.

Assistant District Executive – Design and Assistant District Executive-Construction

The ADED and ADEC shall immediately assemble an appropriate team, including the consultant, if willing, and the Contractor, if appropriate, to determine the likely cause of the alleged error and develop recommended solutions that are cost-effective and provide the desired quality. The ADED shall instruct the consultant in writing to keep all charges associated with developing a solution for the potential design error separate from the other consultant project costs. These consultant costs will not be eligible for payment if it is determined a design error exists. The ADED and ADEC shall brief the DE as to the outcome of the team efforts. The ADEC shall recommend a solution to the DE and the CMD Chief that is cost-effective and provides the desired quality.

Assistant Construction Engineer

The ACE shall oversee the preparation of a construction work order that provides a complete description and consequences of the error and document the additional construction cost. The ACE shall provide a copy of this work order to the ADED.

Assistant District Executive – Design

The ADED, ADEC and staff shall formalize the evidence of the alleged design error including who is responsible for the error, and necessary corrective action, the estimated cost to resolve the problem, the time schedule for design revisions and potential impacts to any construction schedule to present to the DE. After consultation with FHWA, if applicable, and the Office of Chief Counsel, the ADED shall provide a copy of the construction work order, where applicable, to the consultant and notify the consultant of the amount to pay the Department as a result of the design error. If the consultant agrees with the cost, a payment plan to the Department will be arranged. The Office of Chief Counsel must approve any payment plan that results in the Department not receiving full payment within ninety (90) calendar days. Payment of the determined amount shall conclude the design error process.

District Executive

If a consultant is unwilling to reimburse the Department for all costs resulting from the determination of a design error, a fact-finding meeting between the DE or designee, a representative of the Office of Chief Counsel and the CMD Chief and the consultant will be conducted. The consultant will be given an opportunity to provide evidence that the cost is incorrect or justification to support the position that the consultant was not negligent or should not be responsible for all, or a portion of the cost. The DE, in consultation with the FHWA and the Director of the Bureau of Design and Delivery or designee, shall consider the additional information and make appropriate corrections in the determination of negligence and/or in the cost if warranted. The Office of Chief Counsel will commence legal remedies if reimbursement from the consultant is desired.

5.9 Indemnification

The Consultant shall indemnify the Commonwealth (including PennDOT) and the Federal Government against claims and liability related to third-party claims for bodily injury or property damage arising from any intentional acts, negligence, errors, or omissions of the Consultant, its subconsultants, subcontractors, agents, or employees, in the performance of this Contract.

Notwithstanding the foregoing, PennDOT shall pay for any loss, liability, or expense arising out of or relating to PennDOT's acts or omissions regarding its obligations under this Contract, where a final determination of liability on the part of PennDOT is established by a court of law, Board of Claims, or where settlement has been agreed to by PennDOT. This provision may not be construed to limit PennDOT's rights, claims, or defenses arising as a matter of law or under any other provision of this Contract. This provision may not be construed to limit the sovereign immunity of the PennDOT.

5.10- Insurance

- (a) During the term of this Contract, the Consultant shall procure and maintain at its expense and require its subconsultants/subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies authorized to conduct business under the laws of the Commonwealth of Pennsylvania:
 - (1) For design professional services, Professional Liability/Errors & Omission insurance in an amount not less than \$1,000,000.
 - (2) Workers' Compensation insurance sufficient to cover the Consultant's employees and those of any subconsultant/subcontractor engaged in performing Services in accordance with the *Workers' Compensation Act* (77 P.S. § 101, *et seq.*).
 - (3) Auto, Comprehensive General Liability and Property Damage insurance in an amount not less than \$250,000 per person and \$1,000,000 per occurrence.
- (b) The commercial general liability and property policies must name the Commonwealth of Pennsylvania as an additional insured and provide notice of cancellation to the Commonwealth, at least thirty (30) days in advance of the effective date of the change or cancellation, except for cancellation due to the Consultant's nonpayment of premium, where at least fifteen (15) days' prior notice of cancellation must be given to the Commonwealth. The insurance must not contain endorsements or other forms limiting or restricting any action by the Commonwealth as an additional insured.
- (c) The Consultant shall promptly notify the Commonwealth of material changes to its insurance coverage. Cancellation or alteration shall not relieve Consultant of its continuing obligation to maintain insurance coverage in accordance with this Section 5.10 (Insurance).
- (d) The Consultant shall maintain insurance for the term of the Contract meeting the minimum requirements set forth in this Section 5.10 (Insurance); however, the obligations created

under this Chapter 5, apply without regard to a limitation in insurance coverage and Consultant should secure insurance coverage sufficient to protect its business interests, which may exceed any minimum coverage limits required above. Upon request, the Consultant shall provide the Commonwealth with a copy of each current certificate of insurance or insurance policy that evidences the required minimum coverage.

- (e) The Consultant may maintain “umbrella” insurance policies to fulfill these insurance requirements, provided the policies meet or exceed the minimum coverages required under this Section 5.10 (Insurance).
- (f) The Consultant is not required to attach insurance documents within ECMS; however, the Commonwealth reserves the right to request the insurance documents to ensure compliance with Section 5.10. Unless requested, certificates of insurance are not required to be attached to the consultant’s technical proposal in ECMS.

Chapter 6 – Administering Department Sponsored Agreements (Hard Copy)

This chapter deals with state paper agreements processed prior to ECMS implementation.

6.1 – Introduction

A Supplemental Agreement allows PennDOT to change any terms and conditions of an existing Consultant Agreement where warranted. It can also be used to extend the time of completion for a Part, but is not the preferred method if there is a condition that allows for time to be extended by letter.

It is unusual for a Consultant Agreement to be completed without a modification. The very nature of design often requires changes to be made during the process. Many times, these changes result in a Consultant Agreement modification. **However, it must be emphasized that costly modifications (in time and money) can often be avoided with a well-written Scope of Work, an accurate Department Estimate and effective Consultant Agreement management.** Any applicable changes in standard Department Consultant Agreement terms and conditions will be incorporated into the Consultant Agreement on the occasion that a Supplement is being processed.

PennDOT issues an Estimated Progress Report (EPR) to be used for invoicing upon the execution of an original Engineering Agreement and for each Supplement and Fund Transfer. The dollar amounts on this EPR are not to be changed by the consultant for any reason. From time to time the consultant may make a request to the IO to transfer monies among subconsultants, and the IO may approve these requests if there are no SOW changes and if the request is acceptably justified. However, the dollar amounts on PennDOT-issued EPR cannot be changed by these actions – the consultant and IO are simply agreeing that although some particular line items under Costs by Others will be exceeded on ensuing invoices, other line items will not be fully invoiced.

Because the terminology for a Multi-phase Agreement has changed with the inception of ECMS, this type of Consultant Agreement will be referred to as Project Specific Open End Agreements, and Phases will be referred to as Work Orders in this Publication.

Supplementing Project Specific Open Ends is done in order to increase overall funding or to add a subconsultant.

A Pre-Award Evaluation in accordance with Chapter 31 of the Federal Acquisition Regulations will be performed for all agreements and supplements where the total costs exceed \$250,000.

The remaining discussions in this section describe the procedures to be followed to supplement a *Project Specific Engineering Agreement*, or *Project Specific Open End Agreement* and to process Work Orders and Work Order Amendments under a *Project Specific Open End Agreement*.

6.2 – Reasons for Supplements

There are five basic reasons to supplement a Project Specific Engineering Agreement:

1. Changes in the Scope of Work
2. Additional funds needed to complete the existing Scope of Work
3. Agreement Close-Outs
4. Addition of Subconsultant
5. Transfer funds between Categories of Compensation
6. Transfer of funds between firms

A change in the SOW requires the execution of a Supplemental Agreement to revise the Consultant Agreement. This must be done prior to performance of the work and services required. Otherwise, the consultant would be performing work and services outside the terms and conditions established in the Consultant Agreement and shall not be paid for their efforts through the Consultant Agreement. Additional Work Tasks can only be added to the Consultant Agreement if they are within the context of the original advertisement.

When additional funds are needed to complete the work and services described in the Consultant Agreement (i.e., when costs will exceed the originally proposed amount), a supplement may be justified. The IO needs to consider whether the need for additional funds was caused by a low initial Price Proposal estimate, excessive re-work caused by PennDOT, re-work caused by the consultant's poor performance, etc. when deciding whether to recommend the processing of a supplement.

When a Cost Plus Fixed Fee Consultant Agreement Part is being Supplemented the IO Project Manager needs to determine whether the change constitutes a change in the SOW, or that more work-hours are needed to accomplish the existing SOW. Rely on the Technical Proposal to make this determination – if the Supplemental Technical Proposal discussions are appreciably different from the current Technical Proposal discussion for the task(s), the change constitutes a change in the SOW and additional Fixed Fee would be appropriate. If the existing description would not change when compared to the contemplated work and services, no additional Fixed Fee can be allowed. The Price Proposal will need to reflect these decisions by segregating the Direct Payroll for out-of-scope work and services from in-scope work and services. In-scope work and services should not have fixed fee computed and out-of-scope work and services should have fixed fee computed.

A close-out supplement is required when a consultant does not complete the entire SOW covered by the Consultant Agreement, or when the remaining funding encumbrance needs to be released under a Part of a Consultant Agreement that has not yet been finalized. In lieu of a close-out supplement the final invoice will need to include less than 100% complete for those tasks that were not completed under Cost Plus Fixed Fee and Lump Sum Parts.

On occasion, it may be necessary to add a subconsultant to assist in completion of the work and services.

More recent Consultant Agreements allow the transfer of funds between Categories of Compensation or between firms by the issuance of a letter. However, some currently active Consultant Agreements still require a Supplement for these purposes depending on the terms of the legal agreement.

6.3 – Guidelines for Supplements

The CMD, IO, or Engineering District will evaluate, negotiate and execute supplements in accordance with the applicable procedures described in [Chapter 4](#).

If the Engineering District receives a request for these actions from a consultant and the Engineering District does not agree with the proposed SOW, the Engineering District may hold discussions with the consultant to clarify the proposed SOW. *This Clarification cannot include a discussion of the work-hours required.*

To the extent feasible and as required by the terms and conditions of the Agreement, DBE consultants will also need to participate in Supplemental Agreements and Work Orders. When directing a consultant to prepare a proposal for extra work and services, the Engineering District must keep in mind any consultant requirement to meet a DBE goal, and that it applies to the *Total Agreement Amount*.

Portfolio Managers need to assure that adequate funding is available or being arranged at the time of submitting a Supplemental Agreement or Work Order request. If upon requesting the Funds Commitment document it is apparent that these arrangements have not been made, all materials will be returned to the IO within 30 days of the Funds Commitment document request. The IO will need to make another full request once the funding situation has been resolved.

All tasks contemplated by the Technical Proposal will be generated using the standard SOW found in the WBS, and will be reviewed by appropriate Engineering District units.

The IO Project Manager may request a review, as necessary, by CO staff for a Technical Proposal for specialized work and services (i.e. photogrammetric, highway lighting, training, IT – system development, etc.). The form found in Appendix 2G Review of Technical Proposal should be completed for each Team member reviewing the Technical Proposal. The IO Project Manager will maintain all individual comments/approvals on file.

If required, the Engineering District will discuss and clarify the SOW with the consultant - but they will not discuss work-hours.

The Engineering District will prepare and submit:

- 1) Cover letter transmitting the Supplemental Agreement or Project Specific Work Order request to the Bureau of Design and Delivery, Contract Management Division including recommendations concerning the request,
- 2) Supplemental Agreement Request form(s) as necessary [one for each Part being changed by the Supplement] or Project Specific Work Order Request form, Appendix 6A – Supplemental Agreement Request, Appendix 6B – Project Specific Work Order Request
- 3) Engineering District's independent estimate,
- 4) Appropriate Review of Technical Proposals forms, Appendix 2G Review of Technical Proposal, and
- 5) Two copies of the consultant's proposals [one unbound].

6.4 – Procedures

6.4.1 – Changes in the Scope of Work

When the Engineering District determines that a change in SOW is necessary, schedule a meeting with the consultant, and request a proposal outlining the SOW change and proposed cost to perform the work and services. The Engineering District is required to prepare a written SOW for presentation to the consultant at the meeting. This will usually result in fewer changes later and faster processing of the supplement or amendment.

The consultant's proposal must be prepared in the **same detail** as the proposal for the original Consultant Agreement Part or Work Order. The price proposal should follow the procedures outlined in the "Worksheet A Paper Price Proposal Submission Design and Construction" spreadsheet, and follow the task format of the Engineering District's Scope of Work. The electronic spreadsheet for this worksheet is located at <\\pdfpfap2k01\data\penndot shared\Bureau of Design\Design Services Division\Consultant Agreement Section\Publications>. Consultants may obtain a copy of this by contacting the District or CMD.

The Engineering District must prepare an independent estimate of the work-hours to perform the additional work and services. In order to insure that this estimate is independent, this estimate must be prepared, signed, and dated before the consultant submits the proposal to the Engineering District.

6.4.2 – Monitoring of Costs

Each Project Specific Agreement and Project Specific Open End Agreement contains a Monitoring of Costs provision. This provision is usually contained in Exhibit B of the original Consultant Agreement.

The Monitoring of Costs provision requires that when the costs incurred by the consultant for **any** Category of Compensation for any Part or Work Order of the Consultant Agreement reaches 75% of the maximum not to be exceeded amount stipulated for that Category of Compensation, the consultant will temporarily cease work and services on that Part or Work Order and evaluate the status of the **entire** Consultant

Agreement or Work Order. Work will not recommence and the Department will not process any invoices on that Part of the Consultant Agreement or Work Order until one of the following actions has occurred:

1. The consultant has evaluated the status of the work and services required under the terms of the Consultant Agreement and verifies in writing that all of the work and services required for all Parts of the Consultant Agreement or the Work Order can be provided without exceeding the maximum amounts stipulated on the invoice template. If work and services can be completed within the remaining funds, the consultant may proceed and complete the work and services.
2. The consultant has evaluated the status of work and services required under the terms of all Parts of the Consultant Agreement or Work Order, and has made a supplemental, fund transfer or amendment request for additional funds to complete the work and services. PennDOT, acting through the District Executive, has reviewed the consultant's request for additional funds and has agreed that a Supplemental Agreement, fund transfer or Work Order amendment is justified. The IO Project Manager should notify the consultant in writing that they may continue with the work and services up to the maximum amounts stipulated for each Category of Compensation for that Part of the Consultant Agreement or Work Order.

The Engineering District must recall any additional funds needed to complete the Scope of Work when preparing the Past Performance Report, Appendix 7G D429 Past Performance Report (Non-Construction Inspection).

6.4.3 – Agreement Close-Outs

A Close-Out Supplement or Amendment is required whenever the consultant does not complete all of the work and services:

- a. for which it is being paid a fixed fee under Cost Plus Fixed Fee,
- b. for which it is being paid under a Lump Sum or Specific Rate of Compensation, or
- c. for Units of Work that it does not expend under a Cost per Unit of Work.

The Engineering District initiates the Close-Out Supplement or amendment. When making a submission for a Close-Out Supplement, provide a letter from the consultant that indicates that no additional invoices will be submitted. When assembling a Work Order Close-Out Amendment, use as Exhibit "A" a copy of the front sheet only of the final invoice template having a "Final" indication clearly marked showing the "To Date" amounts for each Category of Compensation.

In lieu of a Close-Out Supplement the final invoice will need to include less than 100% complete for those tasks that were not completed under Cost Plus Fixed Fee and Lump Sum Parts. The Engineering District should meet with the consultant and review the work and services completed to agree upon a percent complete.

6.4.4 – Addition of Subconsultant

When the consultant determines that there is a need to add a subconsultant to assist in completing the work and services, or to perform a work task which is outside the current project team's areas of expertise, a technical proposal requesting the addition of the subconsultant and detailing the tasks to be performed by the subconsultant will need to be submitted as well as a price proposal to provide the required services.

The Engineering District should process this supplement in the same manner as a supplement involving changes in the Scope of Work.

6.4.5 – Combination of Scope Changes and Monitoring of Costs

The Engineering District will direct the consultant to include in the request for a Supplement or amendment all information described in the “Changes in the Scope of Work” and “Monitoring of Costs” sections of this chapter. The Engineering District will also perform the required functions outlined in those sections.

The IO should direct the consultant to segregate the cost increases due to either a change in SOW and/or need for additional funds needed to complete the existing Scope of Work. Under Cost Plus Fixed Fee, the consultant is entitled to an additional fixed fee for changes in SOW, but no additional fixed fee will be allowed for additional funds needed to complete the existing Scope of Work.

6.4.6 – Transfer of Funds between Categories of Compensation or between firms

Follow the requirements above regarding “Monitoring of Costs” for those Consultant Agreements that do not allow a fund transfer by letter. For those Consultant Agreements that allow the use of a letter, the Engineering District request letter must have the following backup documents attached: full copy of the consultant’s technical and price proposals detailing justification for all costs to be adjusted, verification of technical review, independent Engineering District estimate, and a marked-up copy of the affected Invoice Template sheets.

6.5 – Specific Procedures – Supplemental Agreements

Supplemental Agreements will be negotiated (if required) and prepared by the appropriate Negotiation Engineer in the Bureau of Design and Delivery, Contract Management Division.

After the Supplemental Agreement is prepared, it will be forwarded to the consultant for execution and, if required, fiscal documents will be requested from the Engineering District. After the consultant returns the Supplemental Agreement, it will be signed by the Deputy Secretary for Highway Administration (or designee) and processed through the Consultant Agreement Execution Task Force for approval. The consultant cannot begin work and services on work included in a Supplemental Agreement until issued a written NTP by the IO Project Manager. The NTP will reference all Parts included in the Supplemental Agreement. Refer to Appendix 7E Notice to Proceed Sample Letter.

6.6 – Specific Procedures – Work Orders

Each Work Order must be processed by the Department and fully executed before the consultant can proceed.

A separate Work Order is required to initiate each new phase (preliminary engineering and environmental studies, final design, services during construction) of work and services. If more tasks under an existing Work Order for a particular phase are necessary, that Work Order should be amended.

The SOW for each new Work Order or Work Order Amendment will be developed by the Engineering District using the WBS tasks. The SOW and Department Estimate will be forwarded to the Engineering District’s Assistant District Executive, Design (ADED). The ADED shall reply to this letter with either comments or approval. Once approval is obtained, the IO Project Manager shall retain it in the project file. Approval from the ADED must be received prior to requesting proposals from the consultant.

Once the Work Order or Work Order Amendment has been prepared, approved and signed by the Department, it will be forwarded to the consultant for execution. After the consultant returns two copies of the Work Order, it will be distributed by the Contract Management Division to the Office of the Comptroller and the IO Project Manager. The Engineer’s acceptance signature and date constitute the NTP.

6.7 – Invoice Procedures

This section describes the procedures to be followed for processing consultant invoices for payment. Invoices for all paper Consultant Agreements are to be submitted and processed in the same manner, regardless of the type of Consultant Agreement.

6.7.1 – Billing Intervals

The interval for consultants to submit an invoice should be four to six weeks. See Section 4.6.3, Invoice.

6.7.2 – Estimated Progress Report

When submitting an invoice for payment, the consultant must use the Department-approved Estimated Progress Report (EPR) or a reasonable facsimile. The approved EPR is provided to the consultant with each Consultant Agreement, the latest Supplemental Agreement or Fund Transfer.

For Non Project Specific Open End Agreements or Project Specific Open End Agreements, the consultant must prepare an EPR for each Work Order based on the example provided upon issuance of the original or latest Supplemental Agreement. The EPR must be approved by the IO Project Manager or other designee prior to submitting the first invoice for each Work Order.

6.7.3 – District Review

On *Cost Plus Fixed Fee* and *Lump Sum* Consultant Agreements, the percent complete is dependent on the percent of the SOW for each task that has been accomplished. This may differ from the percentage obtained by taking the ratio of the payroll expended to the payroll originally established. It is the IO's responsibility, regardless of the basis of payment, to verify the percent complete by a review of work and services completed by the consultant. This may require on-site visits at the consultant's office.

The review of subconsultant invoices is the responsibility of the prime consultant. However, the IO is to certify that the kinds of materials and work and services have been performed and/or furnished. Nevertheless, the prime consultant should submit the invoice received from the subconsultant as a portion of the backup for the prime's invoice. This backup would consist of a Department-style Estimated Progress Report that had been previously approved by the IO and any supporting documentation. The IO Project Manager or other designee should request any amount of back-up data necessary to assure that the charges requested are fair and accurate.

For Project Specific Cost Plus Fixed Fee Parts, if sufficient funds are not available in SAP the IO will make the necessary fiscal adjustment. This fiscal adjustment can only be made for amounts up to the Part's maximum Agreement amount. If sufficient funds are not available under the appropriate compensation category established for the Work Order or Part in the Consultant Agreement, the IO should reject the invoice and notify the consultant that it cannot be paid for costs incurred in excess of the category of compensation limitations under the terms of the Consultant Agreement.

Final invoices should be clearly marked "FINAL" and must include a Past Performance Evaluation, see Appendix 7G D-429 Past Performance Report, if applicable, and Certificate of Completion, Appendix 7H Certificate of Completion, if federally funded. A Past Performance Evaluation is not required to be submitted with the final invoices for Work Orders, but a Final Past Performance Evaluation is required for the last invoice under an Open End Agreement.

Note that no copies of documentation or backup of costs claimed are to be sent to the Central Office. This material is to be retained in the Engineering District files and is **not** to be forwarded.

6.7.4 – Invoice Processing

The consultant sends invoice to Department of Revenue. The Department of Revenue scans the invoice into SAP. If there are problems with the invoice, it is sent to the Comptroller's Quality Control Office to resolve the issues. If the problems are not resolved, the invoice is returned to the consultant for revisions.

When the problems are resolved, the invoice is returned to the Department of Revenue, and entered into SAP. The IO Project Manager reviews the invoice. If there are problems with the invoice, the invoice is returned to the consultant for revisions. If there are no problems with the invoice, the IO Project Manager approves the invoice in SAP.

The Office of the Comptroller audits the invoice. If there are problems with the invoice, the invoice is returned to the consultant for revisions. If there are no problems with the invoice, the Office of the Comptroller approves the invoice in SAP.

The Treasury receives the invoice and sends payment to the consultant.

6.7.5 – Prompt Payment of Subconsultant/Subcontractor Invoices

In compliance with P.L. 1042, No. 142, an Amendment to the Public Works Contract Regulation Law, when a subconsultant/subcontractor has performed in accordance with the provisions of the contract, the prime consultant is obligated to make prompt payment on the invoices.

All monies received by the consultant for work and services furnished by a subconsultant/subcontractor will be paid in full to that subcontractor within fourteen calendar days of the date the prime consultant received payment from PennDOT.

It will be the consultant's responsibility to ensure prompt payments to any and all subconsultants/subcontractors.

6.7.6 – Prompt Payment of Small Business Vendor Invoices

The Small Business Act 266 of 1982, effective June 11, 1983, provides for the payment of interest penalties to qualified small business concerns when payments for goods or services are not made by required payment dates. The following procedures will be followed for consultant invoices applicable under the act.

Definitions

1. Qualified small business concern – any independently owned and operated for-profit business concern employing one hundred or fewer employees and not a subsidiary or affiliate of a corporation otherwise not qualified.
2. Payment date – a payment will be considered made on the date of the check.
3. Proper invoice – a billing from a vendor, for goods or services accepted by PennDOT, that contains or is accompanied by such substantiating documentation and is such form and number as may be required by PennDOT.
4. Receipt of invoice – the later of:
 - a. the date on which the IO actually receives a proper invoice; or
 - b. the date on which PennDOT accepts the goods or services concerned.
5. Required payment date:
 - a. the date on which payment is due under the terms of a contract; or
 - b. thirty calendar days after receipt of a proper invoice if a date on which payment is due is not specified in the contract; or
 - c. the next payment date stated on the invoice if later than the dates established in accordance with the preceding provisions.

6.7.7 – Policy Governing Payments of Interest Penalties

The following, taken from Management Directive 305.7 as amended, clarifies the payment of interest penalties:

- a. Each Commonwealth agency which acquires property or services from a qualified small business concern but which does not make payments for each complete delivered item of property or service by the required payment date will pay an interest penalty to the qualified small business concern as prescribed in this subchapter.
- b. An interest penalty will be paid for the period beginning on the day after the required payment date and ending on the payment date, except that no interest penalty will be paid if the payment date is on or before the 15th day after the required payment date.
- c. Interest will be computed at the rate determined by the Secretary of Revenue as provided in sections 806 and 806.1 of the Fiscal Code (72 P.S. § 806 and 806.1)
- d. Interest will be paid by a separate payment within 30 days of the payment date. The amount of an interest penalty that remains unpaid at the end of each successive 30-day period will become the **principal** amount upon which subsequent penalties will accrue.

For example

Day 1 – receipt of a proper invoice
Day 30 – required payment date
Day 45 – end of grace period, no interest due
Day 50 – payment date; interest due from Day 31 through Day 50
Day 80 – final due date for payment of interest penalty
Day 81 – additional interest begins on interest payment.

6.7.8 – Eligibility

A qualified small business, to be eligible for an interest payment under this Act, must include the following on the face of all copies of each invoice presented to PennDOT:

“(name of vendor) is a qualified small business concern as defined in 4 Pa. Code 2.32”.

When such an invoice is received by the IO, it must be processed immediately, taking care to note the date the goods/service was accepted by PennDOT, as prescribed in Circular Letter AA-1970, Form 2140, Material Delivery Record and Receiving Report. The vendor shall be notified immediately in the event the goods/service is rejected or defective in accordance with established procedure.

6.7.9 – Invoice Processing

The IO will type on the appropriate invoice document on the upper right-hand corner, using bold type:

“QUALIFIED SMALL BUSINESS CONCERN”.

The IO will attach a note to the transmittal letter indicating the invoice is from a qualified small business concern.

The CMD will process the invoice, immediately forwarding it to the Office of the Comptroller for payment.

6.7.10 – Penalties

All interest penalties will be calculated by the Comptroller and will be charged to the administrative program of the IO administering the Consultant Agreement.

Chapter 7 – Third Party Federal Aid Agreements

7.1– Introduction

A Third Party Agreement for the purpose of this Publication is a Consultant Agreement between a consultant and a Municipality or private sponsor receiving federal funds for the services provided through a Reimbursement Agreement with PennDOT. However, the processes outlined in this chapter may also be used for Third Party State Aid Agreements, if the municipality desires.

This Chapter provides policy and assistance in the procurement and administration of Third Party Federal Aid Agreements. New Third Party Federal Aid agreements must be entered in ECMS. This chapter is intended to describe the methodology to be followed by PennDOT personnel and Municipalities for selecting consultants and the administering and monitoring of Third Party Federal Aid Agreements, not how to operate the Engineering and Construction Management System (ECMS). For instructions on how to operate ECMS, please refer to the ECMS website, <https://www.ECMS.PennDOT.pa.gov/>. The ECMS II Local Projects Consultant Agreement manual is located under References → File Cabinet → Municipality Help. A shortcut to this manual can be found on the Municipality's Home Page in ECMS.

Costs incurred by a consultant that is not procured in accordance with approved procedures for federal-aid highway projects will not be eligible for federal-aid participation. Therefore, it is recommended that these procedures are followed for agreements that do not include any federal funds. Any future use of Federal Funds may be jeopardized if this process is not followed.

Costs incurred by a consultant prior to FHWA authorization of funds (Form D-4232, *Authorization of Funds*), cannot be reimbursed. Costs incurred by a consultant prior to a fully executed Reimbursement Agreement or NTP for an executed Engineering Agreement cannot be reimbursed. Costs incurred by a consultant after expiration of the agreement cannot be reimbursed.

For the purpose of this discussion “Municipality” will mean Municipality or private sponsor.

Municipal projects are classified into two different categories for purposes of consultant selection procurement.

1. Small Projects - where the total cost, as estimated by PennDOT or the Municipality, of the work and services to be provided under the Consultant Agreement is \$150,000 or less.

NOTE: If the small project selection procedures were used, federal policy states, “*The full amount of any contract modification or amendment that would cause the total contract amount to exceed the federal small purchase threshold would be ineligible for Federal-aid. The FHWA reserves the right to withdraw all Federal-aid from a contract if it is modified or amended above the federal threshold.*” For this reason, municipalities may elect to use the procedures for Large Projects.

2. Large Projects - where the total cost, as estimated by PennDOT or the Municipality, of the work and services to be provided under the Consultant Agreement is more than \$150,000.

Any agreement advertised prior to July 1, 2011 that was not executed must be re-advertised following these procedures. Municipalities must have their selection procedures approved by CMD prior to advertising for agreements.

Engineering Involvement Restrictions Guidelines, as defined in [Section 1.5](#), will also be applied to all Third Party Agreements. The only exception to these guidelines is when the Municipal Engineer is performing services as an extension of the municipality, as long as the Municipal Engineer is qualified to perform the services and the type of service was included in the advertisement for the Municipal Engineer. Because

the Municipal Engineer functions as an extension of the municipality, the \$1.5 million cap for providing design and CI outlined in [Section 1.5.1](#) does not apply to the Municipal Engineer. However, if the municipal engineer performs both the design and CI on a project:

- The municipality must submit to CMD a Quality Assurance Plan, which ensures appropriate PennDOT oversight and minimizes the risk of conflicts of interest. See Appendix 1B Construction Inspection Quality Assurance Plan.
- The original selection criteria and scope of work must include both Final Design and Construction Inspection Services, and the Consultant Qualifications Package must demonstrate the appropriate qualifications for both services if both services are to be covered under one contract.

A Third Party Agreement is a binding legal instrument. Information found in Chapter 5 will also be applied to all Third Party Agreements. These include:

- 1) [Section 5.2 Confidentiality](#)
- 2) [Section 5.3 Records and Documentation Retention](#)
- 3) [Section 5.4 Disadvantaged Business Enterprise Participation](#)
- 4) [Section 5.5 Stop Work Notification](#)
- 5) [Section 5.7 Costs Incurred Outside the Legal Contract](#)
- 6) [Section 5.8 Design Error Process](#)

7.2 – General Requirements

7.2.1 – Documentation

The Municipality must maintain documentation of its efforts in following the outlined procedures.

7.2.2 – Publication 93 Policy and Procedures

It is the responsibility of the IO Project Manager to assure that the Municipality has a copy of these procedures prior to the selection of a consultant and continuing involvement with a consultant is anticipated.

7.3 – Municipal Selection Process Procedures

7.3.1 – Types of Municipal Selection Processes

The Municipality must determine the method of procurement to be used for the project. Procurement of consulting services will be made by one of the following methods:

Noncompetitive Negotiation – Procurement is made through solicitation of a proposal from only one source.

Sole Source or Emergency selections are permitted when they meet the circumstances outlined in [Section 3.3.2](#) or [Section 3.3.3](#) respectively.

Authorization to use noncompetitive negotiation must be obtained from the CMD and the FHWA prior to requesting a proposal from the consultant. For guidance on justification and procedures refer to the applicable portions of [Section 3.3.2](#) and [Section 3.3.3](#) of this Publication.

For municipal emergency selections, an Emergency Declaration must be signed by an appropriate person.

If a Municipality chooses to use their Municipal Engineer on a Third Party Federal Aid Agreement, the Sole Source Procedures will be used in ECMS. Justification, other than obtaining the Municipal Engineer using the large project competitive selection process, will not be necessary.

If a Municipality uses the Small Project Selection Procedures to obtain a consultant for a Third Party Federal Aid Agreement, the Sole Source Procedures will be used in ECMS. Justification, other than obtaining the consultant using the competitive Small Project Selection Process, will not be necessary.

Competitive Negotiations – Competitors' qualifications are evaluated and the most qualified consultant is selected, subject to negotiation of fair and reasonable compensation.

Competitive negotiations require solicitation of qualifications from the consultant community through a public advertisement. The Municipality can evaluate the qualifications of the consultants submitted in response to the advertisement using one of the following procedures:

- **Normal Selection Procedures** – Three or more consultants are shortlisted based on the statements of interest. Technical proposals are requested from each of these consultants. After an evaluation of these technical proposals, a consultant is selected for the purpose of negotiating a Consultant Agreement.

Timeframes for Normal Selection Procedures outlined in Section 2.1.1 are recommended for third party agreements.

- **Modified Selection Procedures** – For construction inspection, bridge inspection services, and non-complex or selected moderately complex projects as defined in DM1, the top three qualified consultants are ranked based on their statements of interest. The municipality will request Technical and Price proposals from the number one ranked consultant only for the purpose of negotiating a Consultant Agreement.

Timeframes for Modified Selection Procedures outlined in Section 2.1.2 are recommended for third party agreements.

When a project specific agreement is advertised, a firm is eligible to submit an SOI as a prime or subconsultant, only if the following conditions are met:

1. If the firm's prior work involved bridge inspections, traffic studies, or general planning, but did not involve making in-depth recommendations; and
2. The firm did not develop the scope of work for the project; and
 - The firm is not serving as the technical advisor for the municipality's selection committee for the project; and
4. The firm was not involved in obtaining funding (e.g., by drafting grant applications, or providing detailed information to planning organizations for the project).

Municipal Engineer – Third Party Agreements for consultant engineering services (preliminary engineering, final design, construction services, and construction inspection) that are directly related to a construction project may be completed by a qualified Municipal Engineer. The Municipal Engineer must have been selected utilizing an approved qualification based Normal Selection Procedure or a Modified Selection Procedure.

The selection procedures for the Municipal Engineer could take place either by creating an agreement within ECMS and following through with the selection procedures in ECMS or by obtaining approval for the advertisement and consultant selection outside of ECMS.

Small Project Procedures – Can be used for all services provided that the estimated cost of engineering services will not exceed \$150,000. Municipality solicits responses from at least three qualified consulting firms and selects a firm based on the responses and their qualification packages. The municipality will request Technical and Price proposals from this consultant for the purpose of negotiating a Consultant Agreement.

Chart 7.1 – Municipal Process Flow Diagrams

Selection	Selection Process	Initiate in ECMS	Description	Refer to Diagram
Obtain consultant services on a complex project	Normal Selection Procedures in ECMS	Yes	Requires shortlisting, from statement of interest, of three or more consultants who then submit technical proposal for final selection	A
Obtain consultant services on a non-complex project, bridge inspection, construction inspection, or selected moderately complex projects as defined in DM1	Modified Selection Procedures in ECMS	Yes	Consultants selected from statements of interest.	B
Obtain Municipal Engineer	Modified Selection Procedures in ECMS	Yes	Consultants selected from statement of interest	B
Obtain Municipal Engineer	Modified Selection Procedures	No	Advertisement approval submitted outside of ECMS. May request PennDOT to post the advertisement in ECMS	C
Obtain consultant services on a project less than \$150,000	Small Project Procedures	No (Can use Modified Selection Procedures in ECMS if desired)	Municipality contacts three or more consultants outside of ECMS and selects from their statements of interest	D
	Use Sole Source procedures in ECMS after selection	Yes	Municipality creates a sole source agreement in ECMS to receive technical and price proposal and create the legal agreement	
Utilize Previously Approved Municipal Engineer for project	Use Sole Source procedures in ECMS after selection	Yes	Municipal Engineer must be previously selected (in ECMS or outside of ECMS) using a competitive selection procedure and have been previously approved by PennDOT	E

Shaded areas depict ECMS usage.

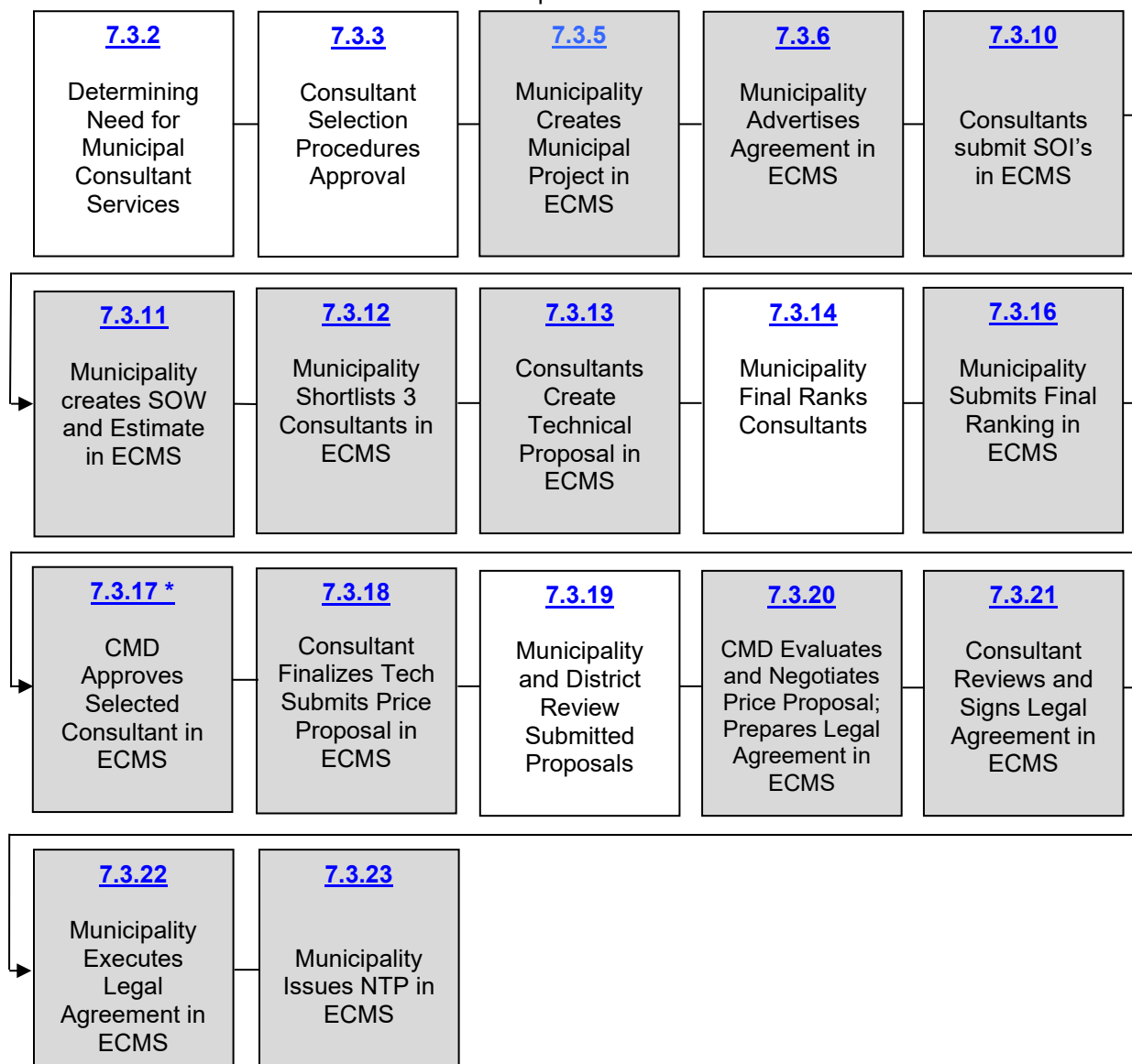
DIAGRAM A - MUNICIPAL PROCESS FLOW DIAGRAMS NORMAL SELECTION PROCEDURES

Large Project Selection Process

Municipal Engineer - When creating an Agreement to select the ME in ECMS *

Small Project - When following the large project procedures

Note: Shaded areas depict actions to be taken in ECMS



* The selection of a Municipal Engineer can occur either as an agreement set up in ECMS or by using a competitive negotiation selection procedure outside of ECMS. This example for Municipal Engineer is for an agreement set up in ECMS. This process will end with the approval of the consultant.

For any specific third party federal aid agreement that will be assigned to the Municipal Engineer, a new agreement will need to be created as a sole source agreement. See Diagram E.

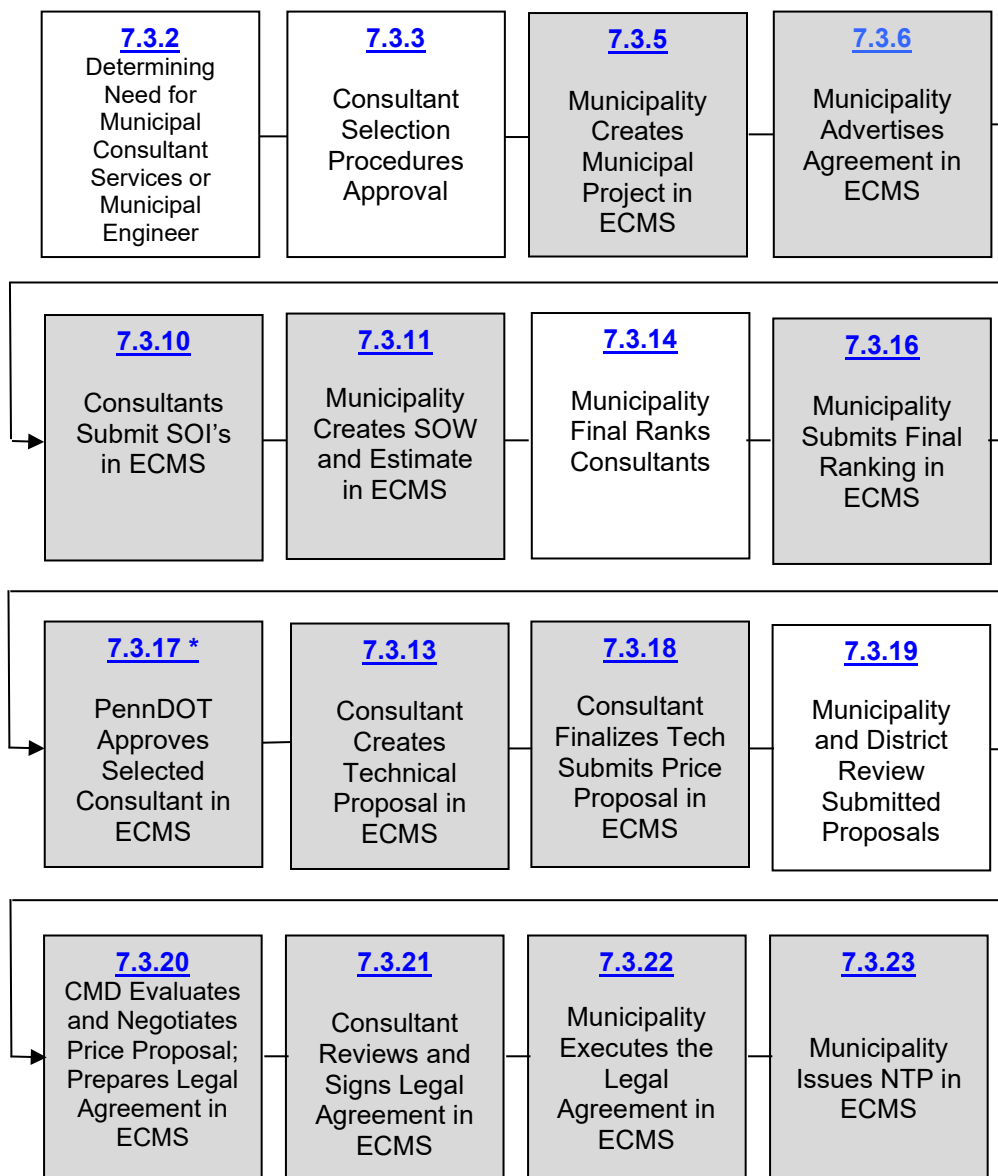
DIAGRAM B - MUNICIPAL PROCESS FLOW DIAGRAMS MODIFIED SELECTION PROCEDURES

Large Project Selection Process

Municipal Engineer - When creating an Agreement to select the ME in ECMS *

Small Project - When following the large project procedures

Note: Shaded areas depict actions to be taken in ECMS

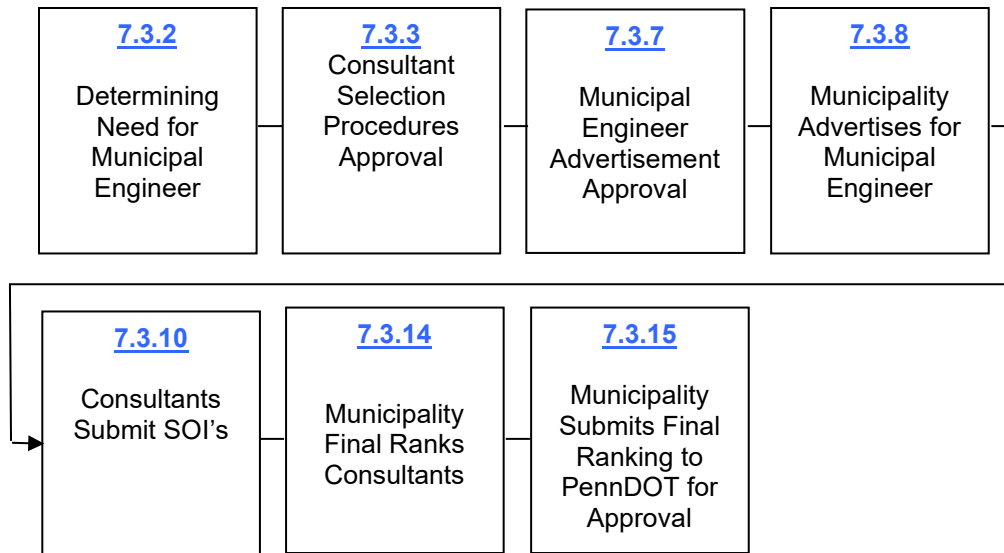


* The selection of a Municipal Engineer can occur either as an agreement set up in ECMS or by using a competitive negotiation selection procedure outside of ECMS. This example for Municipal Engineer is for an agreement set up in ECMS. This process will end with the approval of the consultant.

For any specific third party federal aid agreement that will be assigned to the Municipal Engineer, a new agreement will need to be created as a sole source agreement. See Diagram E.

**DIAGRAM C - MUNICIPAL PROCESS FLOW DIAGRAMS
MODIFIED SELECTION PROCEDURES**

Municipal Engineer – When selection occurs outside of ECMS*



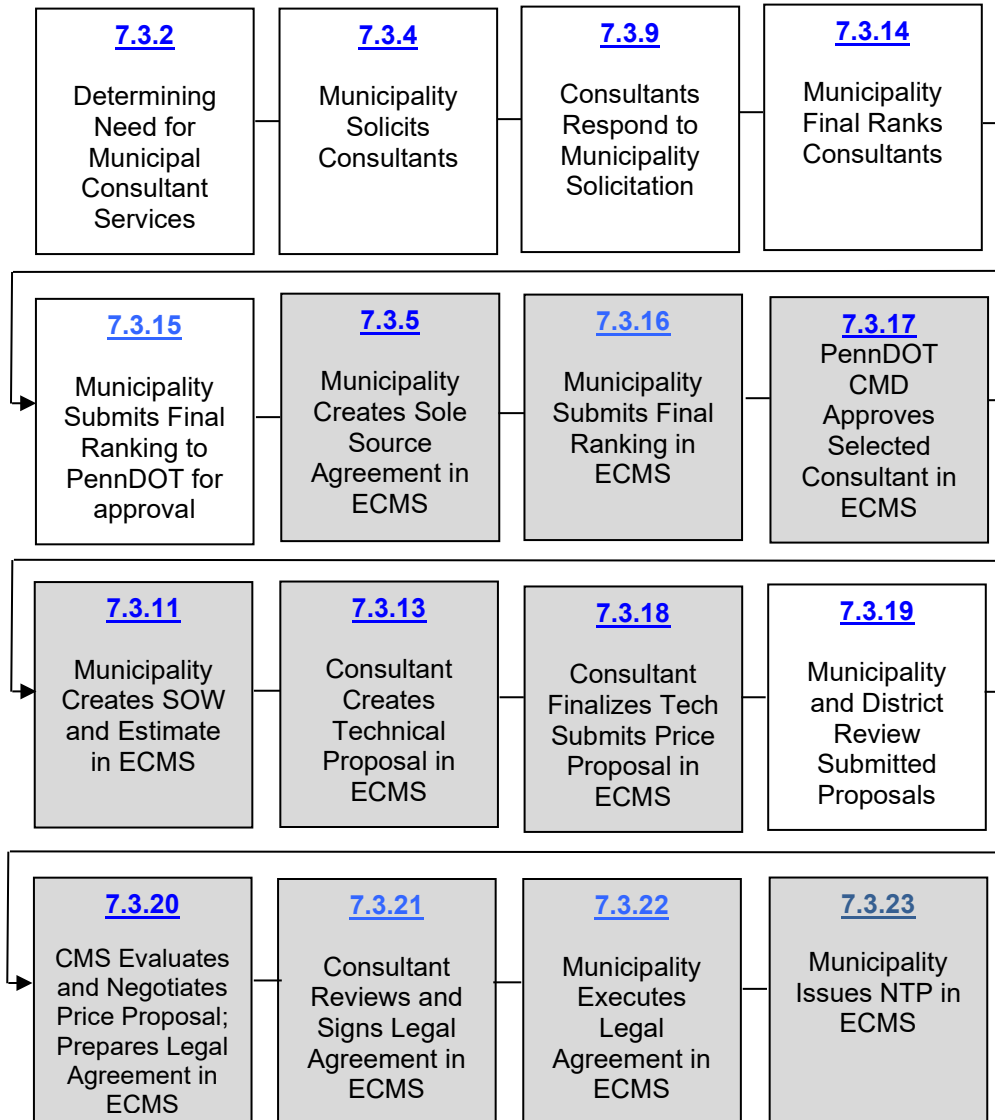
- * The selection of a Municipal Engineer can occur either as an agreement set up in ECMS or by using a competitive negotiation selection procedure outside of ECMS. This example for Municipal Engineer is for when the Municipal Engineering selection is made outside of ECMS.

For any specific third party federal aid agreement that will be assigned to the Municipal Engineer, a new agreement will need to be created as a sole source agreement. See Diagram E.

DIAGRAM D - MUNICIPAL PROCESS FLOW DIAGRAMS SMALL PROJECT SELECTION PROCEDURES

Small Project

Note: Shaded areas depict actions to be taken in ECMS

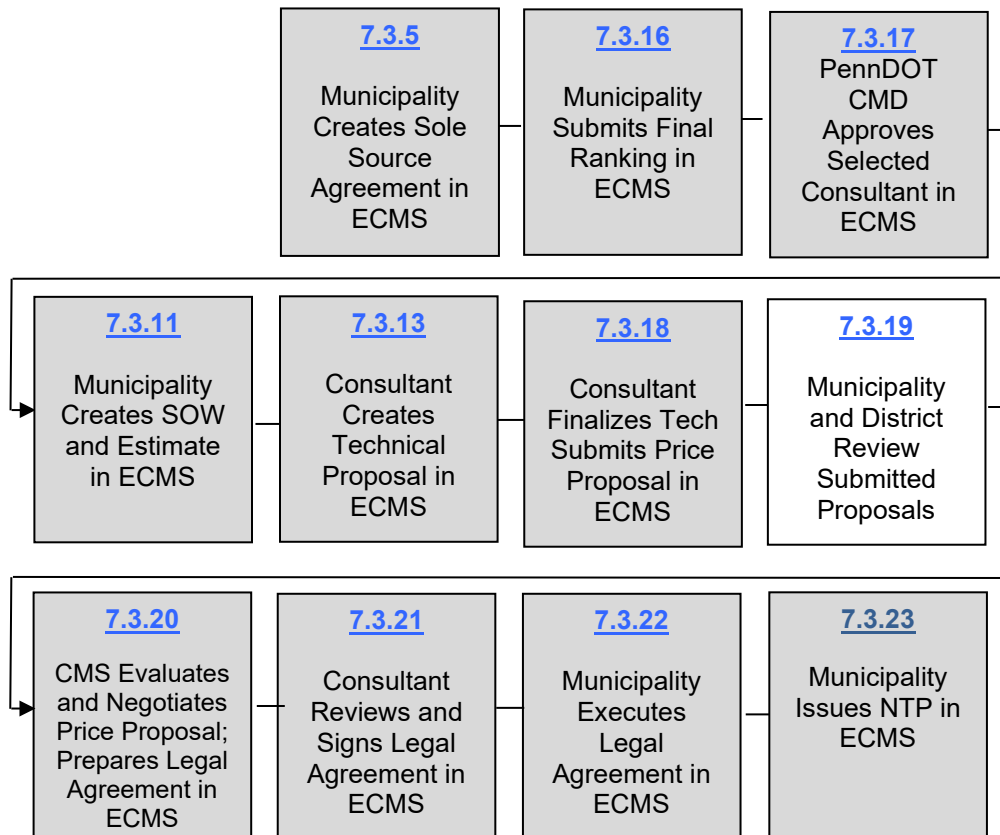


Note: This process may only be used if the work and services to be provided under the Consultant Agreement is expected to be \$150,000 or less. If the cost of the agreement, including future supplements, is expected to be over \$150,000, the Normal or Modified Selection Procedure must be used to ensure federal reimbursement.

DIAGRAM E - MUNICIPAL PROCESS FLOW DIAGRAMS ASSIGNING A PROJECT TO THE MUNICIPAL ENGINEER

Municipal Engineers – For using a Municipal Engineer on a specific project

Note: Shaded areas depict actions to be taken in ECMS



7.3.2 – Determining Need for Municipal Consultant Services

Determining Need for Municipal Engineer

Large Project

Small Project

The Municipality will determine the need for consultant services and document this need based on in-house capabilities and staff availability.

If the Municipality has a full-time engineering staff, their workload is to be evaluated and the need for the use of a consultant justified. The Municipality must document the conclusion that the work and services *cannot* be done in-house by attaching an analysis that compares the available work-hours of personnel with the required skills against the total work-hours required to accomplish the mission of those personnel with the required skills.

In situations where it is evident the municipality does not have an engineering staff, the District Project Manager may place a memorandum stating such in the project file, and include that statement in the transmittal memorandum to the CMD.

Municipal Engineer

Obtaining Services of a Municipal Engineer

The Municipal Engineer may be retained for various consultant engineering services, *provided that it is qualified to complete that specific type of work (example – Design, Construction Inspection, NBIS) as documented during the selection process, and were selected using an approved, competitive selection procedure.*

The Municipality must designate a consultant as its Municipal Engineer by an Act of the Mayor, Council, Board of Supervisors, etc. This designation **cannot** be done for the purpose of a particular agreement, but must be done as a matter of normal course of business for the reorganization of the Municipality's assignments.

The policy and procedures in this Chapter for procuring, preparing, negotiating, and executing Third Party Agreements applies to Third Party Agreements with the Municipal Engineer.

Documentation showing the selection process used for the Municipal Engineer and the Resolution that indicates the designation or minutes of the meeting showing the designation of the Municipal Engineer must be kept on file for each Municipal Agreement in which the Municipal Engineer will be utilized.

The designation of the Municipal Engineer is valid for a period of not more than five years from the date of the Act designating the Municipal Engineer. If the Municipality's procedures for reorganization require annual designation of the Municipal Engineer, then the first Act after selection is complete will be considered as the start of the five year period. Third Party Agreements with the Municipal Engineer must be executed prior to expiration of the five year period. However, the time of completion for these executed agreements may go beyond the end of the five year period.

A new qualification-based selection process should be initiated prior to the end of the five year period to prevent a lapse.

Requirements and Limitations of Municipal Engineer for Third Party Agreements

A designated Municipal Engineer may be assigned a specific project if all of the following requirements are met:

1. The Municipal Engineer was selected using approved qualification based procedures; and
2. The scope of work for the specific project falls within the scope of the Municipal Engineer's agreement.

A copy of the resolution or meeting minutes indicating the Municipal Engineer designation, along with information regarding the qualification based procedures used in the selection and designation process must be submitted to PennDOT.

If, however, a municipality determines that a particular project will not be assigned to the designated Municipal Engineer (due to lack of qualification-based selection; the project being outside the scope of the Municipal Engineer's agreement, or any other reason) and the municipality proceeds to advertise the project, then the designated Municipal Engineer can submit an SOI as a prime or a subconsultant only if the following conditions are met:

1. If the Municipal Engineer's prior work involved bridge inspections, traffic studies, completing Linking Planning & NEPA (LPN) Screening forms, or general planning, but did not involve making in-depth recommendations; and
 2. The Municipal Engineer did not develop the scope of work for the project; and
 3. The Municipal Engineer is not serving as the technical advisor for the municipality's selection committee for the project; and
- The Municipal Engineer was not involved in obtaining funding (e.g., by drafting grant applications, or providing detailed information to planning organizations for the project); and
 - The Municipal Engineer is not part of the ECMS Municipal Team.

A Municipal Engineer may serve as a technical advisor on a municipality's selection committee, except when the Municipal Engineer submits an SOI as a prime or subconsultant for the project. A Municipal Engineer may not serve as a voting member of such committee.

For cause, and at any time, PennDOT reserves the right to revoke approval and use of the designated Municipal Engineer for any Third Party Agreement. Examples of cause include, but are not limited to: poor performance, fraud, and/or the project being cancelled.

7.3.3 – Consultant Selection Procedure Approval

Code of Conduct - The Municipality must include a written code or standards of conduct in a resolution which will govern the performance of its employees engaged in the award and administration of contracts, stating that they neither solicit nor accept gratuities, favors, or anything of monetary value from consultants or contractors or potential consultants or contractors. To the extent permissible by state and local laws, rules, or regulations, such standards will provide for penalties, sanctions, or other disciplinary actions to be applied for violation of such standards.

Conflict of Interest - It is important to note that ethical considerations mandate that any individual at the Municipality or the individual's immediate family, who has a potential conflict of interest with *any* of the consultants submitting an SOI should not participate in the selection process. A fair and impartial evaluation of the consultant's submission is a basic requirement of the qualification based selection process.

All municipal employees engaged in the award and administration of contracts, shall adhere to 2 CFR 200.112, 23 CFR 1.33 and 23 CFR 172 regarding conflicts of interests

The following paragraph must be added to each selection committee member's signed selection documentation:

By signing this selection documentation I am certifying that neither I nor any members of my immediate family have a potential conflict of interest with any of the submitted firms.

Large Project **Municipal Engineer**

The Municipality must use the selection procedures found in Appendix 7A – Policy and Procedures for Consultant Selection. These procedures have been approved by the FHWA and comply with the FHWA requirements and PennDOT's policy and procedures.

Any agreement advertised prior to July 1, 2011 that was not executed must be re-advertised following these procedures. Municipalities must have their selection procedures approved by CMD prior to advertising for agreements.

If this process is not followed, federal funding may be in jeopardy.

7.3.4 – Municipality Solicits Consultants **Small Project**

The Municipality should contact a minimum of three prospective consultants that are qualified and able to provide the required services. A detailed Scope of Work (SOW), describing the project, its location, and services required should be available for these prospective consultants. The contacted consultants must be registered Business Partners in ECMS. The Municipality ranks these firms. This solicitation and ranking will occur outside of ECMS.

7.3.5 – Municipality Creates Municipal Project in ECMS

Large Projects

Municipal Engineer – (When creating an Agreement to select the ME in ECMS)

Small Projects

Municipal Engineer – (When creating a specific project for the approved ME)

The Municipality must create a new agreement and complete the Agreement Detail Screen.

The information entered in the Agreement Detail Screen will determine which template and default data will be made available when initiating the Advertisement.

- *Initiating Business Partner* – This information is automatically entered by ECMS
- *Agreement Name* – Local Description of Project
- *Agreement Type* – Project Specific (this is automatically entered by ECMS)
- *Selection Process* – Modified; Normal; Sole Source - See [Section 3.3](#).
Note: the Sole Source process must be used when creating a small project or preparing an agreement to be assigned to the Municipal Engineer.
- *Legal Description* – This information is eventually used by ECMS to populate the last portion of the descriptive paragraph under Section A.1 in the Legal Agreement while the Negotiation Engineer is creating it.
- *Services Requested* –
 - Construction Inspection – use with Construction Inspection Agreements
 - Design and Misc Services – use with all Agreements other than Construction Inspection
 - Construction Management – use for Construction Management Agreements**Note:** If the agreement includes Construction Management with Construction Inspection, the Services Requested field should be Construction Inspection. If the agreement includes Construction Management without Construction Inspection, the Services Requested field should be Construction Management.
- *DBE Goal* – In accordance with [Section 2.3.3](#)
- *Method of Payment* – Cost per Unit of Work; Cost Plus Fixed Fee; Lump Sum; Specific Rate of Compensation; Specific Rate of Compensation for Construction Inspection – See [Section 3.5](#)

- MPMS Numbers – Use appropriate MPMS numbers, separated by commas

Note: When entering the information above, it should be noted that italicized fields above are locked for editing following the creation of the project. These fields cannot be revised. If incorrect information was entered in any of these fields, a new agreement will need to be created.

Municipality Creates the Agreement Team in ECMS

ECMS then requires that an Agreement Team be established. The agreement team consists of:

- Municipal Owner – the individual(s) tasked with administering the Agreement,
- Municipal Project Managers – a listing of anticipated Municipal Project Managers for each Part under the Agreement
- PennDOT Team – a listing of PennDOT employees who will have access to the project.

If the municipality desires to have no further part in processing the project, they may request that the PennDOT team take over at this point. If that is the direction the Municipality wishes to take, the remaining references to Municipality will be meant to be District. The only exception to this is the actual execution of the Legal Agreement in ECMS. Execution must be completed by the Municipality.

- Municipal Selection Committee – those tasked with reviewing the Statements of Interest. These individuals are included because they will require view authority for the Advertisement and SOI in order to participate in the selection process. See [Section 2.8.1](#) for additional information concerning the Municipal Selection Committee.
- Selected Prime – For agreements with a selection process of Normal or Modified, ECMS will populate the selected consultant fields at the time of execution of the agreement.
- Prime Project Managers – After the selection process is complete, the prime consultant Project Manager must be completed in order to allow individuals who are reviewing the Agreement documents to make contact with the Consultant Project Manager as necessary.

Municipality Creates the Milestones in ECMS

Large Project

Municipal Engineer – (When creating an Agreement to select the ME in ECMS)

There are only two milestones dates that need to be completed.

- The date selection procedures were sent to central office.
- The date selection procedures were approved.

Dates for the Technical Proposal and Price Proposal due dates may also be entered.

Municipality Creates the Milestones in ECMS

Small Project

Municipal Engineer – (When creating a specific project for the approved ME)

There are only two milestones dates that need to be completed.

- The date sole source evaluation submitted.
- The date sole source approved.

Dates for the Technical Proposal and Price Proposal due dates may also be entered

7.3.6 – Municipality Advertises Agreement in ECMS Large Project

Advertisement in ECMS

Selection procedures must be approved by CMD prior to advertising the project.

The municipality will prepare a detailed Scope of Work (SOW), describing the project, its location, and services required.

Advertising the request for statements of interest from consulting firms interested in performing the required engineering services is governed by municipal Home Rule Charters, codes or statutes. The advertisement must appear in at least one newspaper of general circulation. An abbreviated advertisement directing consultants to the ECMS system will suffice for this advertisement.

The project should be advertised in ECMS in accordance with Section 2.3.3 – Advertisement. Exceptions to this for municipal projects include:

1. There is no Planned Project stage for Municipal projects. Advertisements can be submitted and published at any time. Advertisements do not have to occur on Mondays.
2. The due date for the SOI must be at least 14 days after the project is advertised.

Municipal Engineer – (When creating an Agreement to select the ME in ECMS)

If advertising for a Municipal Engineer, the Municipality can advertise by submitting information in ECMS or they can advertise outside of ECMS. If using the ECMS system, the process will follow that of the large project and end when the consultant is selected.

The municipality will prepare a detailed Scope of Work (SOW) describing all of the services required by the Municipal Engineer.

Advertisements must also document the qualifications needed for the Municipal Engineer position. The request for SOI's must contain the following information:

- Professional qualifications necessary for satisfactory performance of potentially required services;
- Any specialized experience and technical competence in the type of work that may be required;
- The firm's capacity, or availability of technical staff, to accomplish work in required time frames;
- Knowledge of the Municipality; and
- Specific experience and/or qualifications related to any other appropriate evaluation criteria.

DBE Goal

Large Projects

Small Projects

DBE Goals will be established, in CMD, based on the current PennDOT DBE methodology and goal document.

Municipal Engineer – (When creating an Agreement to select the ME in ECMS)

The selection of a Municipal Engineer does not require a DBE goal. However, a statement must be included that if the Municipal Engineer is assigned to a Federal-Aid project, a DBE goal may be required.

Construction Inspection

Large Projects

Small Projects

The Municipality should carefully evaluate the number of employees needed for each classification when indicating such on the advertisement or solicitation.

7.3.7 – Municipal Engineer Advertisement Approval **Municipal Engineer (When selection occurs outside of ECMS)**

An example of a Municipal Engineer Advertisement is included in the Appendix 7B – Municipal Engineer Advertisement Example. This document may be utilized to create the advertisement.

The municipality will prepare a detailed Scope of Work (SOW) describing all of the services required by the Municipal Engineer.

The advertisement must include the following information*:

- A. Location and description of all engineering services required by the Municipal Engineer;
- B. Indication of the method of procurement as competitive negotiations;
- C. A statement that the municipality encourages responses from small firms, minority firms, and firms who have not previously performed work for the municipality;
- D. Notification that if the Municipal Engineer is assigned to a Federal-Aid project, a DBE goal may be required.
- E. A statement that indicates whether the modified or normal selection method will be used;
- F. A list, in order of importance, of the selection criteria against which the statements of interest will be reviewed.
- G. A requirement that responding consultant must be ECMS registered business partners with their qualification packages submitted prior to the submission of the SOI.
- H. Contact information for project discussions and a description of the method of discussion format.

Advertisements must also document the qualifications needed for the Municipal Engineer position. The request for SOI's must contain the following information:

- **Professional qualifications necessary for satisfactory performance of potentially required services;**
- **Any specialized experience and technical competence in the type of work that may be required;**
- **The firm's capacity, or availability of technical staff, to accomplish work in required timeframes;**
- **Knowledge of the Municipality; and**
- **Specific experience and/or qualifications related to any other appropriate evaluation criteria.**

The Municipality must submit their advertisement to CMD for approval. This request must be emailed to ECMS_Local_Advertisements@pa.gov. The advertisement cannot be published in ECMS or advertised in local newspapers until approval is given by CMD.

Municipal Engineer – The selection of a Municipal Engineer does not require a DBE goal. However, the Municipal Engineer may have the opportunity to be assigned a Large Project agreement. In this event, a DBE goal may be required.

7.3.8 – Municipality Advertises for Municipal Engineer **Municipal Engineer (When selection occurs outside of ECMS)**

Advertising the request for statements of interest from consulting firms interested in performing the required engineering services is governed by municipal Home Rule Charters, codes or statutes. The advertisement must appear in at least one newspaper of general circulation.

Additionally, the Municipality may elect to submit their advertisement for publishing in ECMS under PennDOT's Local Paper Advertisement Section. This request should be emailed to ECMS_Local_Advertisements@pa.gov.

A minimum of two weeks must be given from the date of advertisement to SOI due date.

Note: Selection Procedures and Selection Criteria must be approved by CMD prior to advertising. Failure to follow these procedures may result in re-advertisement for the Municipal Engineer.

7.3.9 – Consultants Respond to Municipality Solicitation

Small Project (only)

Consultants desiring to work on the agreement must respond to the solicitation from the Municipality indicating their interest and providing information requested in the solicitation.

Consultants that are not interested in pursuing the project should send a courtesy letter to the Municipality informing them of such.

7.3.10 – Consultants Submit SOI's

A SOI is an interested consultant's response to an Advertisement.

SOI documents must comply with all Advertisement requirements. The Municipality needs to consider any noncompliance in their evaluations. Consultants are expected to follow detailed instructions such as policy manuals, governmental regulations, etc., during the development of projects. Failure to adhere to the advertisement reflects poorly on that consulting team's capabilities.

Large Project

Municipal Engineer (for advertisements in ECMS)

Consultants must submit their Statements of Interest in ECMS.

Resumes included with the SOI should be targeted to the advertisement with project specific individuals at the manager or technical expert level.

Municipal Engineer (When selection occurs outside of ECMS)

Consultants must submit their Statements of Interest as directed in the advertisement.

7.3.11 – Municipality Creates Scope of Work and Estimate in ECMS

Large Project

Municipal Engineer

Small Project

Municipal Scope of Work

The Municipality, with input from the District, should generate the SOW based on the WBS found in ECMS. The SOW is created with input from Agreement team members, as outlined in [Section 2.5.1](#).

Construction Inspection Scope of Work – Municipalities should use WBS element 3.4.3 for Construction Inspection municipal agreements. Project Managers should fill out the anticipated number of inspectors and work-hours for each classification under the staffing requirements. Special requirements are also to be completed by the Project Manager. No other changes are allowed to be made to the SOW without approval by the BODD Director.

Municipal Independent Estimate

The Municipality, with input from the District, should generate the Municipal Estimate in ECMS.

7.3.12 - Municipality Shortlists Three Consultants (Normal Process Only)

Large Project

The municipality will select the three most qualified consultants who submit SOIs. A qualification committee shall review the qualifications of consultants who submit SOIs as well as their responsiveness to the requirements of the advertisement. Documentation of consultants considered and the committee's recommendation shall be maintained in the project file. The committee shall document the reasons for their

recommendation in ECMS and submit to CMD. CMD will review submission and approve if acceptable. If not acceptable, CMD will coordinate with District and municipality to revise as necessary.

7.3.13 – Consultants Create Technical Proposal Large Project

Consultants submit Technical Proposal in accordance with [Section 2.7](#).

7.3.14 – Municipality Final Ranks Consultant

Note: If less than three firms submit a response, the District must discuss viable options with the CMD Chief.

Large Project **Municipal Engineer (for advertisements in ECMS)**

The qualification committee shall review the information submitted by the consultant (Technical Proposals and Oral presentations for Normal Selection Procedures; SOIs for Modified Selection Procedures) and make a recommendation for the ranking of the shortlisted consultants for the purpose of negotiating an engineering agreement. The Mayor, Council, Board of Supervisors, etc. shall review the recommendation of the rankings by the qualification committee and approve or reject the rankings. The committee shall document the reasons for their recommendation in ECMS.

The Municipality shall conduct discussions with the firms to consider anticipated concepts and compare alternative methods for furnishing services.

Small Project

The qualification committee shall review the SOIs submitted by the consultant and make a recommendation for the ranking of the consultants for the purpose of negotiating an engineering agreement. The Mayor, Council, Board of Supervisors, etc. shall review the recommendation of the rankings by the qualification committee and approve or reject the rankings. The committee shall document the reasons for their recommendation.

The Municipality shall conduct discussions with the firms to consider anticipated concepts and compare alternative methods for furnishing services.

7.3.15 – Municipality Submits Final Ranking to PennDOT for Approval **Small Project** **Municipal Engineer (When selection occurs outside of ECMS)**

The Municipality submits the documentation justifying the selection to the District. The District forwards the information with their concurrence to CMD. After reviewing the information and finding everything in order, CMD prepares an approval letter for the consultant that was selected for the small project or the Municipal Engineer.

7.3.16 – Municipality Submits Final Ranking in ECMS **Large Project** **Municipal Engineer (for advertisements in ECMS)**

The municipality submits the ranking and supporting justification to CMD in ECMS for approval.

Small Project

Once approval for the small project selection is given by CMD, the Sole Source Agreement can be created and the ranking submitted in ECMS.

The municipality should place in the published reasons why this consultant was chosen. They should include the date that the CMD approved the consultant.

In the unpublished reasons, the municipality should list the other firms that were contacted and not selected.

The municipality submits the final ranking in ECMS for approval to proceed with the legal agreement process.

Municipal Engineer – for using a Municipal Engineer on a specific project

In the sole source agreement, the municipality should state that this consultant was “The selected Municipal Engineer for the municipality approved on mm/dd/yyyy.”

7.3.17 – PennDOT Approves Selected Consultant in ECMS

Large Project

Municipal Engineer - for obtaining the services of a Municipal Engineer

CMD will review the submitted selection in ECMS.

CMD will approve in ECMS if the write up is acceptable. If the write up is not acceptable, CMD will communicate with the District or municipality as required to have the submission revised as necessary.

Municipal Engineer – for obtaining the services of a Municipal Engineer

The process of obtaining a Municipal Engineer will end with this step. This Agreement will remain at Final Ranked status.

Small Project

Municipal Engineer – for using a Municipal Engineer on a specific project

CMD will review the submitted selection in ECMS. If the selection was preapproved as required, the selection will be approved in ECMS.

7.3.18 – Consultant Finalizes Technical Proposal and Submits Price Proposal

Large Project

Municipal Engineer – for using a Municipal Engineer on a specific project

Small Project

Consultants submit Technical Proposal in ECMS. They should refer to [Section 2.10](#) for policy concerning development of a Technical Proposal.

Consultants submit a Price Proposal in ECMS. They should refer to [Sections 3.6.3](#) through 3.6.10 for policy concerning development of a Price Proposal.

7.3.19 – Municipality and District Review Submitted Proposals

Large Project

Municipal Engineer - for using a Municipal Engineer on a specific project

Small Project

The Municipality, in conjunction with the District, will perform technical reviews of the selected consultant's technical and price proposals. The form found in Appendix 2G Review of Technical Proposal should be completed by each Team member reviewing the Technical Proposal. The IO Project Manager will maintain all individual comments/approvals on file. Once the Technical Proposal is acceptable to all applicable parties the IO Project Manager will provide an email to the CMD Negotiation Engineer indicating that:

"The Technical Proposal for the subject agreement has been reviewed by appropriate personnel within the Municipality and the Engineering District and has been approved for its use in the preparation of an Engineering Agreement".

This email documentation should also be kept in the Agreement file.

If the Technical Proposal needs to be revised, the IO Project Manager shall revise the due date for the Technical Proposal to a future date. Once the new date is saved and the SOW is republished the consultant will be able to make revisions.

7.3.20 – CMD Evaluates and Negotiates the Price Proposal, Prepares Legal Agreement

Small Project

Large Project

Municipal Engineer - for using a Municipal Engineer on a specific project

CMD will review the price proposal and hold negotiations as necessary.

The Price Proposal should be evaluated as outlined in [Section 3.6](#).

CMD will prepare the Consultant Agreement in ECMS and submit it for review by the consultant.

CMD will also process the Contractor Responsibility Provision (CRP), for the agreement.

7.3.21 – Consultant Reviews and Signs Legal Agreement in ECMS

Large Project

Municipal Engineer – for using a Municipal Engineer on a specific project

Small Project

Depending on the configuration of the entity entering into the Legal Agreement with PennDOT, certain protocols must be observed in order for it to be legally enforceable:

- a. **Consultant Agreements with Individuals.** A Consultant Agreement with an individual will show the individual as the consultant and be signed by the individual's name. A Consultant Agreement with an individual doing business as a consultant shall be signed by that individual's name and that individual will need to be identified as "Owner".
- b. **Consultant Agreements with Partnerships.** A Consultant Agreement with a partnership will show the partnership name as the consultant. The Consultant Agreement needs to be signed by only one partner if the authority of that partner to bind the partnership has been established. This individual should be identified as "Partner". Determine whether the partner has authority to bind the partnership, including whether the partner is a general or limited partner.
- c. **Consultant Agreements with Corporations.** A Consultant Agreement with a corporation will show the corporate name as the consultant. Individual(s) authorized to sign on behalf of the corporation will sign and indicate official capacity. Unless the Consultant Agreement is signed by a "President", "Vice President", "Secretary", "Assistant Secretary", "Treasurer", "Assistant Treasurer", "Chairperson", "Controller", "CEO", "CFO", "COO", "Member", "Owner", "Partner", or "Other", a copy of the corporate resolution or by-laws authorizing the individual to sign on behalf of the corporation must be submitted and a copy must be on file with PennDOT. A file of these corporate resolutions or by-laws may be maintained by the Office of Chief Counsel for corporations regularly doing business with PennDOT. The CMD also maintains a file of these corporate resolutions or by-laws for reference as necessary.
- d. **Consultant Agreements with Joint Ventures.** A Consultant Agreement with joint ventures may involve a corporation and a partnership and an individual or other combination. In these instances, one entity will need to be identified as the lead entity in the Statement of Interest and any ensuing

legal documents. This lead entity will enter into the Legal Agreement on behalf of the joint venture, and must sign in accordance with a, b, or c above. The individual or individuals that have been granted authority to sign on behalf of all participants must provide a copy of the joint venture agreement stating this.

7.3.22 – Municipality Executes Legal Agreement in ECMS

Large Project

Municipal Engineer – for using a Municipal Engineer on a specific project

Small Project

After the consultant signs off of the agreement in ECMS, it is sent to the municipality for review. If the municipality finds the agreement acceptable, an authorized person executes the agreement electronically in ECMS.

The District will initiate a request for FHWA authorization of funds (Form D-4232, *Authorization of Funds*), with adequate time to secure this authorization in advance of finalizing the Engineering Agreement. **Costs incurred by a consultant prior to FHWA authorization of funds (Form D-4232, *Authorization of Funds*), cannot be reimbursed.**

The Municipality and PennDOT will enter into a general Reimbursement Agreement setting forth the methods for reimbursing the federal and/or State funds. This Agreement will be prepared by the District and forwarded to the Comptroller. This Reimbursement Agreement must be fully executed prior to the execution of the Engineering Agreement.

Any costs incurred for the engineering agreement prior to a fully executed Reimbursement Agreement cannot be reimbursed.

7.3.23 – Municipality Issues NTP

Large Project

Municipal Engineer – for using a Municipal Engineer on a specific project

Small Project

Costs incurred prior to the issuance of a NTP or after expiration cannot be reimbursed.

The IO Project Manager will advise the municipality that they can issue notice to proceed in ECMS after:

- the Reimbursement Agreement is fully executed,
- the engineering Consultant Agreement with the Municipality is fully executed, and
- FHWA has authorized the D-4232.

The consultant cannot begin work and services until issued a notice to proceed in ECMS.

Construction Inspection

An executed reimbursement agreement and an executed construction inspection agreement must be in place before a construction project can be advertised.

7.4 – Managing the Consultant

PennDOT will designate a Project Manager and the Municipality will designate a Project Manager (a public employee) to serve as single points of contact during the term of the Consultant Agreement. The Municipality will conduct monthly (or other appropriate time period) meetings with the consultant to review the status of the project. The IO Project Manager will be informed of these meetings and may attend. These meetings will be arranged by the Municipality, with notification to the IO Project Manager and the consultant. At these meetings, the consultant will present a status report indicating the percent of work and services

completed in each project phase and any problems encountered. The consultant will be responsible for documenting the results of these meetings by submitting an official record of minutes for concurrence by the Municipality and PennDOT. The consultant will also document any follow-up or corrective action taken.

7.5 – Supplementing the Agreement

7.5.1 – Municipal ECMS Agreements

Agreements that were created in ECMS must have their supplements completed in ECMS.

Identifying Need for Supplement

Normal supplements to a Project Specific Engineering Agreement are utilized for these basic reasons:

1. Changes in the Scope of Work
2. Additional funds needed to complete the existing Scope of Work
3. Addition of Subconsultant
4. Transfer of funds between Categories of Compensation
5. Transfer of funds between firms

Changes in the Scope of Work - A change in the SOW requires the execution of a Supplemental Agreement to revise the Consultant Agreement. This must be done prior to performance of the work and services required. As indicated in [Section 5.6](#), a consultant cannot work outside an executed agreement.

Additional Work Tasks can only be added to the Consultant Agreement if they are within the context of the original advertisement.

Additional -Work hours or Other Costs - When additional funds are needed to complete the work and services described in the Consultant Agreement, a supplement may be justified. The municipality needs to consider, whether the additional funds are needed because of a low initial Price Proposal estimate, excessive re-work caused by municipality, re-work caused by the consultant's poor performance, etc. when deciding whether to recommend the processing of a supplement.

When a Cost Plus Fixed Fee Consultant Agreement Part is being Supplemented, the IO Project Manager needs to determine whether the change constitutes a change in the SOW, or if more work-hours are needed to accomplish the existing SOW. The Technical Proposal can be relied upon to make this determination.

- If the existing description would not change when compared to the contemplated work and services, additional Fixed Fee cannot be allowed.
- If the Supplemental Technical Proposal task Department Details and Approach are appreciably different from the current Technical Proposal discussion for the task(s), the change constitutes a change in the SOW and additional Fixed Fee would be appropriate.
- In ECMS, the Profit is assigned to a Part under the original agreement. However, ECMS will allow the Fixed Fee to be assigned on a task basis rather than on a part basis. For this reason, some tasks, which may consist of additional work-hours, as well as, a change in the SOW, may have a weighted average of profit from 0% to 100% to depict the portion in which profit actually applies.

Examples of circumstances in which Fee should be included and circumstances in which no-fee should be included can be found in Appendix 4B - Guidelines to Determine When Fee Should be Included in a Supplemental Agreement (Cost Plus Fixed Fee Agreement).

Addition of Subconsultant - On occasion, it may be necessary to add a subconsultant to assist in completion of the work and services. In these instances, the IO must concur with the subconsultant selected by the prime. The IO cannot request that a specific subconsultant firm be added.

7.5.2 – Municipal Agreements Created Outside of ECMS

For Agreements that were created via local paper method, all supplements will need to be processed on paper.

Municipality Creates SOW and Estimate

Municipal Scope of Work

The municipality, with input from the District, should generate the SOW based on the WBS found in ECMS. The SOW is created by the municipality and the District's Project Manager with input from Agreement team members, as outlined in [Section 2.5.1](#).

Construction Inspection Scope of Work – For *Consultant Construction Inspection Agreements*, PennDOT's latest version of "Scope of Work for Municipal Projects" Municipal Scope of Work should be used on all local agreements. Project Managers should fill out the anticipated number of inspectors and work-hours for each classification under the staffing requirements. Special requirements are also to be completed by the Project Manager. No other changes are allowed to be made to the SOW without approval by the BODD Director.

An electronic copy of the latest "Scope of Work for Municipal Projects Consultant Construction Inspection" is located in the ECMS File Cabinet.

Municipal Independent Estimate

The Engineering District, with input from the Municipality, should generate the Independent/Department Estimate using the forms found in Appendix 7C - District Estimate Summary for Municipal Agreements

Consultant Finalizes Tech, Submits Price Proposal

Consultants submit Technical in accordance with [Section 2.10](#).

Consultants should refer to [Sections 3.6.3 through 3.6.10](#) for policy concerning development of a Price Proposal.

Price Proposals for Design and Construction Inspection Agreements should be submitted following the format shown in Worksheet A Paper Price Proposal Submission Design and Construction Inspection. Price Proposals for bridge inspection agreements should be submitted following the format shown in Worksheet B Paper Price Proposal Submission NBIS. Electronic spreadsheets for these worksheets are available on the Shared Drive at [P:\penndot shared\Bureau of Design\Design Services Division\Consultant Agreement Section\Publications](#). Consultants may obtain a copy of these by contacting the District or CMD.

Note:

These forms can be modified as necessary. Green highlighted fields are for edits. Blue highlighted fields contain calculations. Unnecessary row or columns should be 'hidden' NOT DELETED.

Any consultant using this form is responsible to verify all input and calculations.

NOTE: Using these electronic spreadsheets does not eliminate the consultant of any obligation to verify the information that they submit.

All pages of the Technical and Price Proposals MUST be submitted hard copy on 8 1/2" x 11", single sided paper. Failure to meet these requirements will cause the Proposal to be returned for revision.

When possible, a document footer should be placed on each page of the Technical Proposal and Price Proposal as follows:

Consultant Firm Name

Date of Submission

When using the Price Proposal Spreadsheets, a macro is set up to add the consultant's firm name and date of submission/revision to all sheets. Note: Page numbers should remain blank.

Municipality and District Review Submitted Proposals

The District, in conjunction with the Municipality, will perform technical reviews of the selected consultant's technical and price proposals, and document these reviews using the Review of Technical Proposal form found in Appendix 2G Review of Technical Proposal.

The Municipality will review the consultant's proposal and either reject it or recommend that it be accepted by PennDOT. This recommendation should be forwarded to the District along with:

- Any limitations on profit or salaries that the municipality has.
 - If the Municipality has no limitations, a statement to that effect should be included.
 - If the municipality's limitations are not as stringent as those listed in [Section 3.6](#), federal funds may be jeopardized.
- Evidence of the opportunity provided DBE firms

The District will prepare and submit the following to the CMD:

- 1) Cover letter transmitting the Municipal Supplement request including recommendations concerning the request,
- 2) Request for Consultant Services – Municipal Supplemental Agreement Request
 - Appendix 7D – Municipal Request for Supplemental Agreement
- 3) the Engineering District's independent estimate,
 - Appendix 7C – District Estimate Summary for Municipal Agreements
- 4) the appropriate Review of Technical Proposals forms,
 - Appendix 2G – Review of Technical Proposal
- 5) One, unbound copy of the consultant's proposals. Electronic submission is preferred.

The appropriate forms must be included as they contain information necessary in writing the Municipal Supplement.

CMD Evaluates and Negotiates Price Proposal; Prepares Legal Agreement

The CMD will review the price proposal and, if desired, hold negotiations as necessary.

The Price Proposal should be evaluated as outlined in [Section 3.6](#) with the following exceptions:

CMD will prepare the Municipal Supplement and provide three copies of the prepared Supplement to the Municipality for review and execution by the Municipality and the consultant. CMD will also process the Contractor Responsibility Provision (CRP), for the supplement.

Municipality and Consultant Executes Municipal Supplement/Municipality Issues NTP

The District will initiate a request for FHWA authorization of funds (Form D-4232, *Authorization of Funds*), with adequate time to secure this authorization in advance of finalizing the Engineering Supplement.

The Municipality and PennDOT will enter into a general Reimbursement Supplement Agreement setting forth the methods for reimbursing the federal and/or State funds. This Supplement will be prepared by the District and forwarded to the Comptroller. This Reimbursement Supplement Agreement must be fully executed prior to the execution of the Engineering Supplement.

Any costs incurred for the engineering supplement prior to a fully executed Reimbursement Supplement Agreement cannot be reimbursed. Costs incurred prior to the issuance of a NTP or after expiration cannot be reimbursed.

When all three copies of the Engineering Supplement are signed by both the Municipality and the consultant, one copy each is to be retained by the consultant and the Municipality. The Municipality will forward the third copy to CMD.

The IO Project Manager will advise the Municipality that they can issue the consultant a written notice to proceed when

- the Reimbursement Supplement Agreement is fully executed,
- the engineering Consultant Supplement with the Municipality is fully executed, and
- FHWA has authorized the D-4232.

The consultant cannot begin work and services until issued a written notice to proceed. The Notice to Proceed will reference all Parts included in the Supplemental Agreement. Refer to Appendix 7E Notice to Proceed Sample Letter.

Construction Inspection

An executed reimbursement agreement and an executed construction inspection agreement must be in place before a construction project can be advertised.

7.6 – Invoicing

All invoicing must be completed within ECMS.

The Municipality should establish invoice procedures (i.e. to whom the invoice should be sent, how many copies, etc.) The interval for consultants to submit an invoice should be four to six weeks. See Section 4.6.3, Invoice.

The invoice format will be in sufficient detail to monitor progress. For consistency's sake and to facilitate review, the Engineering District may encourage the Municipality to use one of PennDOT's standard Invoice Templates. The Municipality will review the appropriate portions of the invoice and document its acceptance.

The consultant sends invoice to the municipality for their review and approval. The municipality can then send it to the Department of Revenue with the proper reimbursement coding or forward it to PennDOT. Department of Revenue scans the invoice into SAP. If there are problems with the invoice, it is sent to the Comptroller's Quality Control Office to resolve the issues. If the problems are not resolved, the invoice is returned to the municipality for revisions.

When the problems are resolved, the invoice is returned to the Department of Revenue, and entered into SAP. The IO Project Manager reviews the invoice. If there are problems with the invoice, the invoice is returned to the municipality for revisions. If there are no problems with the invoice, the IO Project Manager approves the invoice in SAP.

The Office of the Comptroller audits the invoice. If there are problems with the invoice, the invoice is returned to the municipality for revisions. If there are no problems with the invoice, the Office of the Comptroller approves the invoice in SAP.

The Treasury receives the invoice and sends payment to the municipality.

For the occasional three-party Consultant Agreement (PennDOT, Municipality, and Consultant), consultant invoices will be reviewed by the Central Office Bureau administering the program.

The Municipality is responsible for monitoring the consultant's performance and conducting audits.

7.7 – Closing out the Agreement

Before the Consultant Agreement is terminated, the Municipality, in conjunction with PennDOT, will ensure that there is adequate documentation regarding the propriety of claims and that all terms and conditions of the agreement have been satisfied.

The Municipality and the IO Project Manager will complete a Past Performance Report (Appendix 7F D-429 Past Performance Report (Non-Construction Inspection) or Appendix 7G D429 Past Performance Report – Construction Inspection). For projects that were entered in ECMS, the evaluations can be completed in ECMS.

For federally funded projects, a Certificate of Completion, see Appendix 7H Certificate of Completion, should be prepared.

The Agreement should be closed out in an expeditious manner.

Appendix Documents



REQUEST FOR CONSIDERATION FOR ENGINEERING INVOLVEMENT RESTRICTIONS

Fill in the following information as applicable:

Current Agreement/Contract Number: _____ Future Agreement/Contract Number: _____

District: _____ County: _____ SR: _____ Section: _____

SPN: _____ Allot: _____ FPN: _____ MPMS: _____

Consultant: _____ Local Municipality: _____

Project Description: _____

Involvement on Current Agreement/Contract

☐ Preliminary Engineering	☐ Preliminary Review
☐ Final Design	☐ PS&E Preparation
☐ Construction Inspection	☐ Department Review
☐ Other _____	

Actual duties performed: _____

Were recommendations, deliverables, or services developed related to the subject project?

☐ Yes ☐ No (if yes, request will be denied)

Involvement on Current Agreement/Contract _____

_____ (provide additional pages if necessary)

Executive Summary why consultant feels a conflict of interest does not exist

_____ (provide additional pages if necessary)

CONSULTANT REPRESENTATIVE (authorizes that information provided is true and correct)

X _____ Date _____

CONSULTANT AGREEMENT CHIEF

☐ Concur-Forward
☐ Do not Concur

X _____ Date _____

Reason for Non-Concurrence

_____ ☐ FHWA Concurrence

OFFICE OF CHIEF COUNSEL

☐ Concur
☐ Do not Concur

X _____ Date _____

Reason for Non-Concurrence



CONSTRUCTION INSPECTION QUALITY ASSURANCE PLAN

Agreement Number: _____ County: _____ SR: _____ Section: _____

Project: _____

District: _____ Municipality: _____

Consultant: _____

PMC Approved Construction Costs \$ _____

The Department or municipal person responsibly in-charge will provide sufficient oversight to minimize the potential for conflicts of interest. This individual, designated by the District Executive, will be responsible for the following:

- Monitoring of additional funds needed to complete the existing Scope of Work
- Recommending to the District Executive the approval of work orders
- Recommending to the Assistant District Executive the approval of time extensions
- Evaluating the potential for design errors and omissions in accordance with Publication 93 Procedures
- Conducting periodic on-site reviews to monitor progress, quality, and cost

This QA Plan addressing the above items must be sent to the Chief of the Contract Management Section. The plan should be included with the District's request for the preparation of an engineering agreement for the design consultant to be considered for construction inspection services on the same agreement for projects with PMC approved construction costs under \$1,500,000. This form is required for all agreements where the municipal engineer performs both the design and construction inspection services on the same agreement.

The following project specific information must be included: District, Project, SR, Section, County, Municipality, Consultant, and Agreement number. The QA plan must be certified by the Department individual, municipal employee, or Municipal Engineer (provided the Municipal Engineer is not the firm providing these services), responsibly in-charge, with appropriate signatures and date. A copy of this plan is to be kept on file by the individual responsibly in-charge.

This QA Plan will be one measure included in the Contract Management Section's review efforts.



JUSTIFICATION TO USE A CONSULTANT

Fill in the following information as applicable:

Agreement Number: _____ Work Order: _____ MPMS: _____

District: _____ County: _____ SR: _____ Section: _____

SPN: _____ Allot.: _____ FPN: _____

Consultant: _____ Local Municipality: _____

Project Description: _____

- ☐ The overall workload of the various in-house unit technical staff was evaluated and it was determined that they do not have the capacity to perform this work.
- ☐ The timetable for completing this work by PennDOT personnel is not acceptable for this work.
- ☐ This work cannot be done by PennDOT personnel due to a lack of expertise.
- ☐ Adequate funds to complete a Consultant Agreement are committed.
- ☐ Knowledgeable PennDOT personnel are available to monitor and manage the consultant to ensure compliance with the terms and conditions of the Consultant Agreement.
- ☐ For Photogrammetry Services, a workload analysis from the Bureau of Project Delivery, Photogrammetry and Surveys Section (PSS) was obtained and is attached.
- ☐ Other _____
- _____
- _____

**DISTRICT PORTFOLIO MANAGER
OR DIVISION CHIEF**

I CERTIFY THAT THE ABOVE, CHECKED JUSTIFICATIONS STATEMENTS ARE CORRECT

X _____

Signature

_____ Date



BUREAU OF HUMAN RESOURCES SAMPLE MEMO

OS-600 (1-13)



pennsylvania
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us

MEMO

DATE: *Insert Date*

SUBJECT: Consultant Agreement *E0nnnn* Work Order *n*
Request for Office of Administration Approval

TO: *(Insert Name of BHR Director)*
Director, Bureau of Human Resources

FROM: *(Insert Name of District Executive or Bureau Director)*
(Insert Name of Initiating Organization)

The *Initiating Organization* has developed a work order for *E0nnnn* to provide an engineer to assist with *(Insert reason for needing consultant here. Example: with quality assurance design reviews for bridges and other structures)* for the duration of *(enter duration – ex. one year)*. This assistance is required due to *(enter reason here – ex. the number of vacancies in the Division)*.

The Comptroller is requiring that the Office of Administration approve the work order prior to the Comptroller's approval based on their opinion that the scope is "temporary help" in nature. We are requesting that you send a memo including the attached work order to the Office of Administration for their approval.

If you have any questions, please contact _____ of my staff at _____@pa.gov or (###)###-####.

####/XXX/

CC: *F.M. LastName, Location*
F.M. LastName, Location



OFFICE OF ADMINISTRATION SAMPLE MEMO

OS-600 (1-13)



pennsylvania
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us

MEMO**DATE:** *Insert Date***SUBJECT:** Consultant Agreement *E0nnnn* Work Order *n*
Request for Office of Administration Approval**TO:** *(Insert Name of BCC Director)*
Director Bureau of Classifications and Compensation
Office of Administration**FROM:** *(Insert Name of BHR Director)*
Director, Bureau of Human Resources

The *(Insert Initiating Office here)* has developed Work Order *n* of Consultant Agreement *E0nnnn* for *(_____)* to provide an engineer to assist *(Insert reason for needing consultant here. Example: with quality assurance design reviews for bridges and other structures)* for the duration of *(enter duration – ex. one year)*. The *Initiating Office* *(enter reason here – ex. the number of vacancies in the Division from a total complement of ##)*. The civil service list of qualified candidates is inadequate to fill all these vacancies; this necessitates, therefore, the use of engineer from a consulting firms.

The following contract work order is being forwarded for your review. We recommend your approval, and please provide any comments below:

Consultant Agreement <i>(E0nnnn WO n)</i>	Consultant <i>(Name of Consultant)</i>	Approve/Disapprove	Comments
--	---	--------------------	----------

After review, please return a copy of this memorandum and the contract work order for further processing. Thank you for your assistance.

Contract reviewed and returned: _____ Date: _____

Name of BCC Director
Director

####/XXX

CC: *F.M. LastName, Location*
F.M. LastName, Location



COMMONWEALTH COMPUTER SYSTEM ACCOUNTS USER AGREEMENT

Consultant Firm: _____

Consultant Firm Address: _____

Printed Name: _____

Phone Number: _____ Email Address: _____

- I understand my communication on Commonwealth Computer Systems, including but not limited to ECMS, ECMS II, LAN, MPMS, Asta, BMS2, may be monitored by Commonwealth staff administering the various site accesses for the safety of the Commonwealth and its integrity.
- I understand that I may only use the designated Commonwealth sites essential for the Department's management of assigned project(s) for business activities including but not limited to, roster maintenance and invoice inquiries associated with the project duties appointed under assigned agreement(s), as applicable.
- I will adhere to the security policies of Commonwealth agencies as well as the security policies of any remote sites which I access.
- I will not engage in any illegal activity in connection with my use of the Department's Computer Systems access, including, but not limited to, hacking, cracking, or the unauthorized transmission or receipt of proprietary material (e.g., copyright video works, audio works, software, or publications, as well as trademarks or service marks).
- I understand that I am not to access ECMS sites related to the selection of consultants, including, but not limited to consultant ranking (Shortlisting and Final Ranking) and other consultants' personnel information in respect to the current and future agreements.
- I understand that I may be prosecuted under Pennsylvania state law for unauthorized access or use of any data bases or computer systems which are not considered essential to the fulfillment of Project Management duties associated with the assigned agreement(s).
- I will not harass other users, local or remote.
- I will not share Commonwealth System data with other personnel within or outside the firm without written consent from the Department's District Portfolio Manager.
- I will report any observed attempts at violating Commonwealth or PennDOT or privacy policies to the District Portfolio Manager or authorized designee.
- I will not utilize information from ECMS to recruit or retain individuals within the consulting design firms, nor disclose any information to other individuals other than the District Portfolio Manager.

CONSULTANT

I have read the above and agree to abide by the requirements set forth therein. I understand that any violation of this agreement may result in:

- Access from PennDOT computer systems revoked
- The termination of PennDOT Agreements
- Potential disbarment of the firm
- Individual prohibited from future work with the Commonwealth.

I further understand that disciplinary action, as noted above, may be taken if I fail to abide by any of the requirements of this user agreement.

X _____
Date

DISTRICT PORTFOLIO MANAGER

I have read and concur with the appropriateness of this user's request for authorized Commonwealth Computer System access.

X _____
Date

X _____
Printed Name Phone Number



REVIEW OF SCOPE OF WORK

Agreement Number: _____ County: _____ SR: _____ Section: _____

Project: _____

To: _____

From: _____ Phone Number: _____

Date Sent: _____ Date Due: _____

Attached is a copy of the written Scope of Work that we propose to distribute to the consultants at the Scope of Work Meeting for the subject project. Please check the appropriate block below.

☐ The written Scope of Work appears satisfactory.

☐ I offer the comments indicated below or on the attached sheet.

☐ I need additional time to provide an adequate review. I will have my comments to you

on or before _____, 20____.

If this memorandum is not returned to my office on or before the due date indicated above, I will assume you do not have any comments.

SCOPE OF WORK REVIEWER

Based on the extent of my comments, a review of revised Scope of Work before distribution to the shortlisted or ranked consultant –

☐ Is Necessary

☐ Is Not Necessary

X

Signature

Date

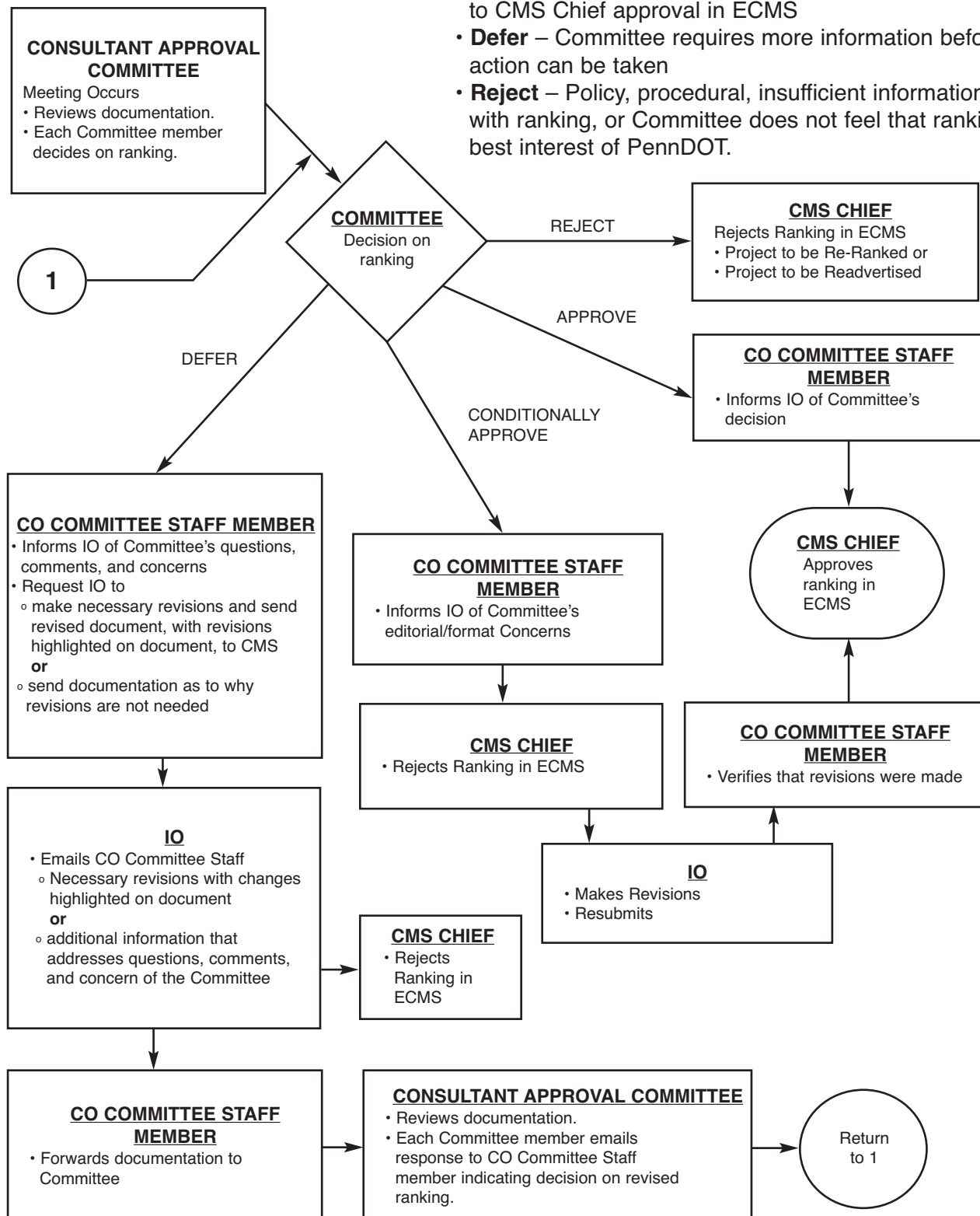
Phone



CO CONSULTANT APPROVAL COMMITTEE PROCESS

DEFINITIONS:

- **Approve** – Committee unanimously approves ranking
- **Conditionally Approve** – Unanimous approval by Committee provided editorial/format changes are made prior to CMS Chief approval in ECMS
- **Defer** – Committee requires more information before an action can be taken
- **Reject** – Policy, procedural, insufficient information issues with ranking, or Committee does not feel that ranking is in best interest of PennDOT.





REVIEW OF TECHNICAL PROPOSAL

Agreement Number: _____ County: _____ SR: _____ Section: _____

Project: _____

To: _____ Consultant: _____

From: _____ Phone Number: _____

Date Sent: _____ Date Due: _____

Attached is a copy of the written consultant's proposal dated _____ that has been prepared by the consultant listed above for this project. Please check the appropriate block below.

- ☐ The Technical Proposal appears satisfactory.
- ☐ I offer the comments indicated below or on the attached sheet.
- ☐ I need additional time to provide an adequate review. I will have my comments to you on or before _____, 20____.

If this memorandum is not returned to my office on or before the due date indicated above, I will assume you do not have any comments.

Technical Proposal Reviewer

Based on the extent of my comments, a review of revised Technical Proposal -

☐ Is Necessary ☐ Is Not Necessary

X _____

(Signature)

(Date)

(Phone)



DISTRICT/IO CONSULTANT SELECTION MEETING MEMO SAMPLE

Date: _____

Subject: Minutes from _____ Consultant Selection Committee Meeting
(District /IO)
ECMS Engineering Agreement Number (s): _____

To: MEMO TO FILE

From: _____, _____
(Name) (Title)

On _____, the Consultant Selection Committee established for the above referenced agreement met for the purposes of ranking and selecting a consultant(s) for the agreement(s).

The members of the Consultant Selection Committee for this agreement(s) are (min. of five committee members):

- _____, Agreement Manager
- _____, Committee Member (& DE Delegate)
- _____, Committee Member
- _____, Committee Member
- _____, Committee Member
- _____, Committee Member

The committee received _____ Statements of Interest for the agreement(s).

After discussing the Statements of Interest submitted for the agreement, the Selection Committee provided their individual scores which were totaled to produce the following cumulative score for the top firms:

- Ranked #1: _____, Score: _____ out of _____
- Ranked #2: _____, Score: _____ out of _____
- Ranked #3: _____, Score: _____ out of _____
- Ranked #4: _____, Score: _____ out of _____
- Ranked #5: _____, Score: _____ out of _____

By signing this selection documentation, I am certifying that neither I nor any members of my immediate family have a potential conflict of interest with any of the submitted firms.



SOLE SOURCE FACT SHEET AND CHECKLIST FOR SERVICES

Department: Pennsylvania Department of Transportation

Agreement Number: _____ County: _____ SR: _____ Section: _____

Project: _____

Estimated Total Dollar Amount of Order/Contract: _____

Consultant's Name: _____ Consultant's F.I.N: _____

Consultant's Address: _____

Consultant's Contact Person: _____

Consultant's Contact Person's Telephone Number: _____

Location where service is to be performed: _____

1. Please check the reason(s) for this request:

a) Federal Aid Agreements (follow 23 CFR 172.7(a)(3))

- ☐ Federal Statute or federal regulation exempts services from competitive procedures
- ☐ Service available only from single source
- ☐ Emergency - not enough time to conduct competitive negotiations
- ☐ Competition determined inadequate after solicitation of a number of sources

b) Non Federal Aid Agreements

- ☐ State statute exempts services from competitive procedure
- ☐ Clearly not feasible to award contract on competitive basis
- ☐ Contract for services is in the best interest of the Commonwealth
- ☐ Service available only from single source
- ☐ Emergency – not enough time to conduct competitive negotiations
- ☐ Competition determined inadequate after solicitation of a number of sources

NOTE: The checklist by itself is not sufficient justification for sole source procurement. (The agency must provide written justification that one of these conditions exists and include it in the contract file.)

2. Briefly describe the services you are requesting and their function.

3. What research has been done to verify the contractor as the only known source?

4. If this is a continuation to an existing service how was the original item procured (sole source or competitive)? What additional, related, sole source procurements have occurred since the initial procurement? Please identify the previous purchase order or contract number(s).

5. How has this service been procured in the past? (Competitive sealed bidding, competitive sealed proposals, sole source, other). Please provide document numbers.

6. What are the consequences of not procuring this specific service?

7. If timing is a factor, who established the timeframe and why?

8. What are the consequences of not procuring this specific service within the established timeframe?

9. How long has the agency known that the services were needed and why wasn't the contract process started earlier?

10. List any other information relevant to the acquisition of this supply, service, or construction item (attach additional 8-1/2 x 11 sheets, if necessary).

NAME OF PERSON COMPLETING FORM	SIGNATURE OF REQUESTING AUTHORITY
X _____ Date _____ Printed Name _____ Title	X _____ Date _____ Printed Name _____ Title - ADE or Bureau Director



NEGOTIATION POSITION MEMORANDUM (NPM)

Agreement Number: _____ County: _____ SR: _____ Section: _____

1. Negotiation Engineer: _____

2. Current Date: _____

3. Prime Consultant: _____

4. Proposal Dates: Technical: _____ Price: _____

5. Technical Proposal: ☐ Satisfactory ☐ Un-Satisfactory

6. Work hours: Consultant: _____ Difference = _____

District: _____ % Difference = _____

☐ Acceptable ☐ Un-Acceptable

7. Overhead Rates:

FIRMS	IN PROPOSAL		APPROVED		FISCAL YEAR END	APPROVED REMARKS
	OFFICE	FIELD	OFFICE	FIELD		

8. Profit/Fee: ☐ Satisfactory ☐ Un-Satisfactory

9. DBE: Advertised _____% In Proposal _____% Overall _____%

10. Direct Costs: ☐ Satisfactory ☐ Un-Satisfactory

11. Escalation: ☐ Satisfactory ☐ Un-Satisfactory

12. Negotiation Meeting: ☐ Not Required ☐ Required

Comments:

13. Negotiation Engineer Signature: _____



FHWA ORDER 4470.1A
APPENDIX A
(CONTRACTOR COST CERTIFICATION)

Certification of Final Indirect Costs

Consultant firm: _____

Indirect Cost Rate Proposal: _____

Date of Proposal Preparation: _____
(mm/dd/yyyy)

Fiscal Period Covered: _____ to _____
(mm/dd/yyyy to mm/dd/yyyy)

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

- 1) *All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), part 31.*
- 2) *This proposal does not include any costs which are expressly unallowable under the cost principals of the FAR of 48 CFR 31.*

All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

Signature: _____

Name of Certifying Official: _____
(print)

Title: _____

Date of Certification: _____
(mm/dd/yyyy)

*Note: This form is to be completed by an individual executive or financial officer of the consulting firm at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the overhead rate proposal submitted in conjunction with the agreement.



DBE MONITORING FORM

Note: To be initiated by the prime consultant for each Agreement, WO, or Supplement, when the DBE Goal is not met for the entire Agreement, or as directed and submitted to the IO Project Manager by the Price Proposal Due Date.

Agreement Number: _____ WO/Supplement: _____ District: _____ County: _____

Project Description: _____ DBE Goal: _____ %

Prime: _____ Project Completion Date: _____

Amounts including this WO/Supplement: Total Agreement Amount \$ _____

Total DBE Committed Amount \$ _____

DBE Committed _____ %

Attach a written statement addressing the circumstances that relate to the DBE Goal not being met. Include responses to the following, as needed, as well as any additional information that is deemed necessary.

- For the task in the Work Order/Supplement, was the task in the original agreement specifically assigned to the DBE subconsultant(s)?
- For the task in the Work Order/Supplement, did the SOI or technical proposal, as part of the team presented for selection, identify the DBE subconsultant(s) as ready, willing, and able to perform the task?
- Did an investigation with other DBE subconsultant(s) as part of the original team occur? Or Was a request for an official substitution for a DBE subconsultant(s) that is (are) equal to or better to the original DBE subconsultant submitted?
- Does the supplement/work order eliminate or reduce the amount of work anticipated for the DBE subconsultant. If so, what was the reason for this change?
- Is an additional Work Order or Supplement anticipated which would provide an opportunity for additional tasks which could be assigned to the DBE subconsultant(s)?

INITIATING ORGANIZATION

☐ APPROVED

☐ Consultant does not appear to be acting in Good Faith. Forward to CMS Chief for further review.

Findings and Recommendations _____

X _____ Date

PHASE I -CONSULTANT AGREEMENT CHIEF

☐ Approve

☐ Disapprove

X _____ Date

☐ Accept Determination ☐ Appeal to Phase II

Consultant Representative

Date

PHASE II -BEO DIRECTOR

☐ Approve

☐ Disapprove

X _____ Date

☐ Accept Determination ☐ Appeal to Phase II

Consultant Representative

Date



EXECUTIVE SUMMARY

PennDOT and the consultant community (through ACEC/PA) have entered into a partnership to utilize a new methodology for negotiating consultant agreements. Although new to Pennsylvania, this process has been used by other state Departments of Transportation and their consultant business partners with great success.

The new process is called Mutual Gains Negotiations and some benefits include: significant reduction in negotiation and project delivery time, statewide consistency in negotiations, and the mutual understanding of expectations regarding scope, deliverables, range of staff hours and project complexity. As its name implies, this approach increases the chances of arriving at a fair and reasonable price for professional services for both the consultant and the Department.

What is Mutual Gains?

- A. Mutual Gains Negotiations is a collaborative approach to negotiating contracts. Rather than the adversarial approach (win-lose), the mutual gains process involves a consensus-building, win-win approach. In order for Mutual Gains Negotiations to be successful, the parties need to have a shared understanding of the project scope and complexity, agree to the goal of a mutually beneficial solution, and the parties must trust one another.

Mutual Gains Negotiations are based upon the following five principles:

1. Identify Interests – Each party to the negotiations should identify their own interests and try to understand the other party's interests. Interests are defined as needs, concerns, motives, goals or objectives.
2. Consider all Options – Be creative and consider all options to finding a mutually acceptable solution that meets the interests of both parties.
3. Develop Standards or Criteria – The use of standards and established criteria assist with consensus building by keeping the discussions focused upon fact rather than opinion. One example is the Staff Hour Estimating Guide (the Guide).
4. Understand Your Alternatives – Each party in the negotiation should determine their Negotiation Limits. What is the fall back position if the negotiation fails?
5. Build Relationships – Remove personal problems from the negotiations and focus on the business aspect. One of the goals of Mutual Gains Negotiations is to build and strengthen relationships between PennDOT and consultants. All parties should strive for open and honest communication during negotiations. If the communication is straightforward and based upon fact, not opinion, the relationship will grow even if the negotiation fails.

In order for Mutual Gains Negotiations to be successful, both parties must work together to ensure they have mutual expectations of the scope of services, project complexity, and deliverables before staff hours and a price proposal are generated.

B. Scope Clarification Meetings

Mutual Gains Negotiations places great emphasis upon both parties meeting and agreeing to the project complexity, scope, and mutual expectations of deliverables and plan presentation.



MUTUAL GAINS NEGOTIATIONS

The first step in contract preparations is to clearly understand the level of complexity and the expectations with regard to plan preparation and deliverables. Although a standard scope of services may be outlined through the Work Breakdown Structure (WBS) codes, some aspects of the scope may be negotiable. Both Project Managers (Department and Consultant) must understand the scope and be prepared to clarify it as necessary in negotiations. A scoping meeting with all necessary technical experts will be held and all parties will mutually agree to the scope. In some cases, a field visit with key PennDOT and consultant staff prior to beginning negotiations may prove beneficial for complex projects.

- C. Scope Clarification meetings/discussions are central to effective negotiations and are to be considered a routine part of negotiations.
- D. After the scope is agreed to, the price proposal will be prepared using the Staff Hour Estimating Guide as a starting point. For 80 percent of the projects, the staff hours for each task should fall within the accepted range as per the Guide. The Guide can be found in the ECMS References/File Cabinet link.
- E. Staff Hour Estimating Guide

The Staff Hour Estimating Guide is intended to provide uniform staff hour estimates for professional services contracts statewide. PennDOT and Consultant Project Managers will use the detailed descriptions of the work tasks covered in the Work Breakdown Structure together with the range of staff hours required to negotiate every project task that is covered in the Staff Hour Estimating Guide. This, in addition to full and consistent project scoping, will allow contracts to be negotiated in a uniform manner throughout the Commonwealth.

Simply stated, the Staff Hour Guide provides a list of WBS Tasks, the unit of measure, the staff hour range, and the basis for the staff hour range. The unit of measure may be different for each task. Examples include the number of sheets for roadway plans, the number of noise receptors, acres of wetland, etc. The “basis for the staff hour range” provides additional details as to what is included in the task to meet the range of staff hours.

INTRODUCTION TO MUTUAL GAINS NEGOTIATIONS

I. BACKGROUND

- 1 The majority of PennDOT’s Engineering Agreements for Professional Services are negotiated agreements. A cost-plus-fixed-fee contract, as defined by the Federal Acquisition Regulations (FAR), is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract. The fixed fee amount is the amount that is negotiated based on the level of effort mutually agreed to by both parties.
- 2 The primary basis for negotiations of a Cost-Plus-Fixed-Fee contract is Scope Clarification and reasonable level of effort for the pre-determined fixed fee reimbursement. The negotiation, therefore, between PennDOT and the Consultant is to establish a fair and reasonable total project cost. This total cost is derived from scope clarification, establishment of mutual expectations regarding deliverables, schedule, the experience and type of staff to be assigned to the project, the staff hours by task for those staff classifications, and the fee or profit associated with the work.
- 3 PennDOT is undergoing a change in the way consultant services are developed and negotiated. The new methodology is called Mutual Gains Negotiations. Like its name implies, this approach increases the chances of arriving at a fair and reasonable price for professional services for both the consultant and the Department.



MUTUAL GAINS NEGOTIATIONS

- 4 Mutual Gains Negotiations recognizes that both parties have interests that must be satisfied if there is to be a successful outcome; therefore, both parties should work collectively to realize those interests. However, it also emphasizes negotiating hard for legitimate interests and exercising alternatives when those interests cannot be achieved; thus everyone will not always “win”.

II. MUTUAL GAINS NEGOTIATIONS OVERVIEW

Negotiation is a very important process. It determines a consultant’s business success, which affects the livelihood of individuals. In addition, PennDOT has a legal and fiduciary obligation to safeguard the taxpayers’ hard-earned money. They must ensure that all expenditures result in a reasonable value for the public. Negotiations, therefore, should not be treated as a game where one side wins as much as possible without regard to the interests of the other side.

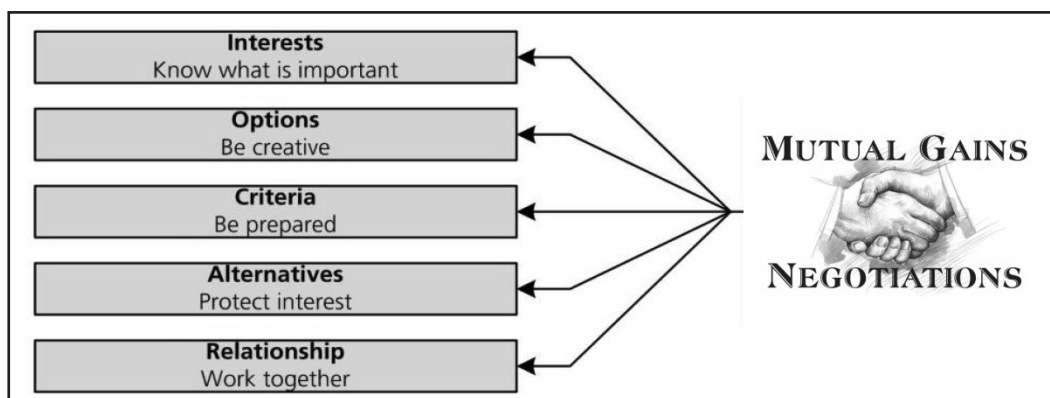
In order for Mutual Gains Negotiations to be successful, both parties must work together to ensure they have mutual expectations of the scope of services, project complexity, and deliverables before staff hours and a price proposal are generated. To assist with this effort, PennDOT has developed standard procedures for mandatory Scope Clarification Meetings as the first component of this new process.

The second component of the negotiations process is the development of a Staff Hour Estimating Guide. The Staff Hour Estimating Guide is intended to provide uniform staff hour estimates for professional services contracts statewide. The Guide will provide a range of effort for engineering and environmental tasks. PennDOT and Consultant Project Managers will use the detailed descriptions of the work tasks covered in the Work Breakdown Structure (WBS) together with the range of staff hours required to negotiate every project task that is covered in the Staff Hour Estimating Guide. In addition, the process will focus upon full and consistent project scoping, allowing contracts to be negotiated in a uniform manner throughout the Commonwealth.

Simply stated, the Guide provides a list of WBS Tasks, the unit of measure, the staff hour range, and the basis for the staff hour range. The unit of measure may be different for each task. Examples include the number of sheets for roadway plans, the number of noise receptors, acres of wetland, etc. The “basis for the staff hour range” provides additional details as to what is included in the task to meet the range of staff hours.

Five Elements of Mutual Gains – There are five elements to the Mutual Gains approach to negotiations: interests, options, criteria, alternatives and relationships. Figure 1, Mutual Gains, illustrates the five elements of mutual gain. Each is discussed below and useful procedures for the negotiator are recommended.

Figure 1
Mutual Gains





MUTUAL GAINS NEGOTIATIONS

- a. Interests – Know What Is Important.** There is a difference between an “interest” and a “position”. Examples of positions are salary caps or a minimum number of staff hours. An interest is the reason for a position. Interests are not always obvious, so careful analysis is necessary in the pre-negotiation stage. For example, the interests of a consulting firm may be exposure to a new client and maintenance of staff levels as well as profitability. PennDOT’s interests include: quality of work and schedule, as well as budget. Know your interests and negotiate hard for them. Understand that positions are simply means to an end and that there may be many positions that can satisfy an interest.

Each Project Manager (PM) should list the key interests for the project. Some must be satisfied to reach an agreement; others may be desirable, but not essential. Be honest with yourself, and make sure only significant interests are listed. Once your interests are identified, place yourself in the position of the other side and list their likely interests using the same process. Then recognize that other parties who may not be directly involved in the negotiations may have legitimate interests in the outcome. These parties should be consulted prior to negotiations to determine their interests. Identify your mutual interests and work collectively with your business partner to understand those mutual interests.

- b. Options – Be Creative.** This process begins once you understand your own interests and have anticipated the other side’s interests. Or, more importantly, where those interests are likely to coincide and where they are likely to conflict. Where there is likely to be conflict, brainstorm options with your team to present during the negotiations. Many bottom-line dollar issues can be resolved by preparing creative options for issues such as the scope of services, deliverables and schedule. Have options available before negotiations begin.

During negotiations, be forthcoming with your interests and try to get the other side to do likewise. Do not get hung up on positions. Seek to understand the interests behind positions and convince the other side that there may be more than one way to satisfy its interests. Try collective brainstorming, with both sides working to satisfy both sets of interests. This process is the essence of Mutual Gains Negotiations.

Be creative. For example, if there is likely to be an impasse on staff hours, will changes in the scope or schedule overcome the problem?

- c. Criteria – Be Prepared.** Both sides should prepare properly for negotiations. The more thorough the preparation, the more quickly an agreement can be reached and work can begin. A good rule of thumb is to spend at least as much time preparing for negotiations as you expect to spend during actual negotiations.

There is a wealth of legitimate criteria available to help overcome roadblocks in negotiations. The Staff Hour Estimating Guide is the most up to date resource for negotiations across the Commonwealth. It is in the interest of both parties to review the available data carefully and to use it in negotiations as a beginning point for agreement. Remember that other criteria may be useful also such as a firm’s own experience or industry averages.

Both PMs should learn as much as possible about the other side prior to beginning negotiations. The PennDOT PM should read submitted material carefully, visit the firm’s website, obtain and read its brochures and newsletters, and talk to colleagues who have worked with the firm and its nominated PM. The consultant PM should learn about the District, the office involved and the PennDOT PM



MUTUAL GAINS NEGOTIATIONS

assigned to the project. They should become familiar with the Contract Management Section (CMS) staff and learn the negotiating philosophy of the District they will be dealing with. The consultant PM must know PennDOT's policies about any issues likely to come up in negotiations.

- d. Alternatives – Protect Interests.** Each side should have a good idea of what its Negotiation Limit (NL) is. A strong NL is real power in negotiations. For example, assume you are buying a car. Once you have done thorough research, know the worth of the car you want and have a price from another dealer. You have all the power in negotiations. If you cannot reach a deal, you have a good alternative. Your NL will determine your walk-away position. Neither consulting firms nor PennDOT should be forced into poor business deals as a result of negotiations. While the mutual gains approach to negotiations does not advocate that either party walk away from negotiations, that option should be carefully evaluated and exercised when necessary. Otherwise, one party may hold unfair power over the other. Because this element of Mutual Gains Negotiations is available, there must be no stigma or damage to the relationship attached if a firm chooses to exercise its NL.

It is not the intent of Mutual Gains Negotiations to encourage terminated negotiations; rather it is to ensure that both parties reach well-thought-out business decisions. While everyone wants negotiations to be successful, there may come a point where an agreement cannot be achieved. Know that point before beginning negotiations.

Evaluate all consequences of not reaching an agreement. For PennDOT, it could mean project delays because it will be necessary to go through the negotiating process with the second-ranked firm. Anticipate this alternative by learning about the number-two ranked firm. It is, however, inappropriate to have any discussions with the second-ranked firm until negotiations are officially terminated with the first-ranked firm.

A thorough analysis of your NL allows you to determine your walk-away position. What interests and bottom-line price must be achieved in the negotiations for an agreement? Deliberately formulate an answer to this question before negotiations. Making a walkaway decision in the heat of negotiations is usually a mistake.

- e. Relationships – Work Together.** Remember that negotiations are only the beginning of an important relationship. Once a deal is struck and a project completed successfully, future project opportunities may result for the consulting firm involved. Long-term relationships are equally important to both consulting firms and to PennDOT; it is important that negotiations do not damage those relationships. It requires professional skill to negotiate hard for your interests while maintaining positive relationships. It requires excellent communications and going the extra mile to view the issues from the perspective of the other side.

Remember, each side enters negotiations with certain preconceptions about the other side. Some are accurate and some may be inaccurate. Carefully evaluate your own preconceptions, and be willing to alter them if they prove to be false. Understand that the other side has preconceptions about you, and they may or may not be correct as well.

Many use negotiation techniques that are really nothing but game-playing. Such techniques, in the long run, will damage relationships. Remember, "winning" does not require that the other side "lose." Be open and honest and avoid playing games. The PM must approach negotiations with the attitude that both sides have a right to fulfill their interests. Work as hard to satisfy the other side's interests as you do to satisfy your own.



MUTUAL GAINS NEGOTIATIONS

Ultimately a relationship of trust and respect is established by being clear and honest with the other party, not by giving in. You should not sacrifice an important interest for the sake of maintaining a relationship. Being cooperative does not mean giving up your interests or settling for an agreement that is not as good as your NL.

- 2 Know What Is Negotiable. – The first step in contract preparations is to clearly understand what is “on the table”, or negotiable. In this section, each negotiable issue is described in greater detail (see Figure 2).

Figure 2
Negotiable Issues

- ◆ Scope of Service
- ◆ Staff Hours
- ◆ Distributions of Staff Hours
- ◆ Staffing
- ◆ Cost of Services and Rates
- ◆ Subcontract Costs
- ◆ Schedule

- a. **Scope of Services.** Both parties must agree to the scope. Even though a standard scope of services is used, the provisions of that scope are negotiable. The consultant may have proposed an innovative approach that should be considered, or PennDOT may have some special concerns. Both PMs must understand the scope and be prepared to clarify it as necessary in negotiations. A field visit with key PennDOT and consultant staff prior to beginning negotiations will prove helpful in reaching a common understanding of project issues and requirements.
- b. **Staff Hours.** The PennDOT PM should prepare an independent staff hour estimate of the project prior to negotiations for use in evaluating the consultant’s estimate of staff hours. The PennDOT Staff Hour Estimating Guide (Guide) should be the starting point for both PennDOT and the consultant to develop a particular project’s estimate of staff hours. A good secondary check on staff hour estimates may be to compare the Guide’s estimate with those of similar projects – taking into account differences in complexity, location, scope, etc. The objective of Mutual Gains Negotiations is to avoid gameplaying. Deliberately estimating high or low, whether it is PennDOT or the consultant, does not achieve this important goal of the mutual gains principles.
- c. **Distribution of Staff Hours.** Not only are the total staff hours important, so is the distribution of staff hours. It is necessary to have sufficient staff hours of key personnel in the project, and the requirements identified during Scope Clarification may or may not point out the need for more experienced staff to work above the range of values found in the Guide. Conversely, the Scope Clarification may identify a reduction in the anticipated level of effort of more experienced staff. Another point to remember is that while very experienced staff may receive higher wages, they should be more productive and, consequently, work fewer staff hours.
- d. **Staffing.** Addition to or elimination of selected staff members from the nominated team is a negotiable issue. However, the nominated team may have played a large part in selection. Location of staff may also be an issue and is negotiable.
- e. **Cost of Services and Rates.** Both PMs should review Publication 93 and understand all of the parameters of negotiations.



MUTUAL GAINS NEGOTIATIONS

- f. Subcontract Costs.** Subcontracts can be a significant cost factor in a contract. The costs of subconsultant services and associated rates are as negotiable for subconsultants as they are for the prime consultant. Subconsultant costs must be carefully prepared and reviewed prior to negotiations.
- g. Schedule.** The schedule may have a direct impact on the price of the project. Both PMs should review the schedule carefully and be prepared to offer refinements, as appropriate.

III. USING MUTUAL GAINS

Once a negotiation strategy has been determined and preparations have been made, the negotiation process itself can begin. Figure 3, Using Mutual Gains, offers some suggestions for conducting successful negotiations.

Figure 3
Using Mutual Gains

- ◆ Select Negotiators
- ◆ Start Right
- ◆ Communicate
- ◆ Apply Mutual Gains Strategy
- ◆ Document Negotiations

- 1 Select Negotiators.** The negotiators for both sides should be introduced and their relative roles made clear to all. Negotiators should have the authority from their organization to make decisions. Going back to the boss to get authority for a decision only delays the process, and it may be seen as a delaying tactic. The selected negotiators should participate throughout the negotiations process. PennDOT negotiators sometimes tend to compartmentalize negotiations; that is, one group negotiates rates, one staff hours, and so on. Some districts operate in teams and rely heavily on the Contract Management Section staff for information on contractual issues. It may be appropriate to bring in specialists at key points in the process. Good decisions are best made, however, when one person leads the entire process and has authority to revisit previously negotiated elements, if necessary, before a final agreement is reached.
- 2 Start Right.** One of the first steps during actual negotiations is to agree on how the negotiations are going to be conducted and to establish a deadline for an agreement. Take time at the beginning to get to know the individuals on the other side and to establish a degree of familiarity and trust. Work to foster cooperation and rapport. Do not try to use negotiation strategies to give yourself some sort of advantage. This behavior will be viewed as game-playing and unprofessional. If the other side attempts such tactics, clearly explain that you will not negotiate under such circumstances.
- 3 Communicate.** Communication is essential to successful negotiations. A key communication skill in negotiating is listening. Earnestly try to understand the other side's viewpoint. Criticizing the other side is a sure way to shut down communications. Do not be secretive during negotiations. Be willing to share appropriate information and useful data. Good communication does not mean agreeing with the other side. Mean what you say, and don't equivocate with bad news. Be direct and honest. Always maintain a professional approach. Negotiations can be stressful, but you should minimize your emotional reactions and be understanding of emotional reactions from others. Stay calm, and separate people issues from substantive issues.
- 4 Apply a Mutual Gains Strategy.** Become skilled in the use of mutual-gains techniques previously discussed. Throughout the process, both parties should be open to reasoned arguments. A "take it or

MUTUAL GAINS NEGOTIATIONS

leave it” position from the outset is not negotiations. Both parties should negotiate in good faith. The end result of the mutual gains negotiating technique is to obtain a fair price for both PennDOT and the consultant. Throughout negotiations, therefore, keep in mind that agreement on a bottom line price is the objective, not the mechanics of reaching it.

- 5 **Document Negotiations.** There will be many agreements and understandings reached during the process of negotiations. When appropriate, the contract or scope of services should be revised to reflect these agreements. However, there will also be many minor issues discussed that may not warrant revisions in the contract but are important to document. The comments column in the standard staff hour estimating forms can be used to document understandings reached for levels-of-effort issues. Other understandings can be documented with negotiations reports, letters or memoranda to file. The CMS staff should be consulted if the appropriate method of documentation is not clear.

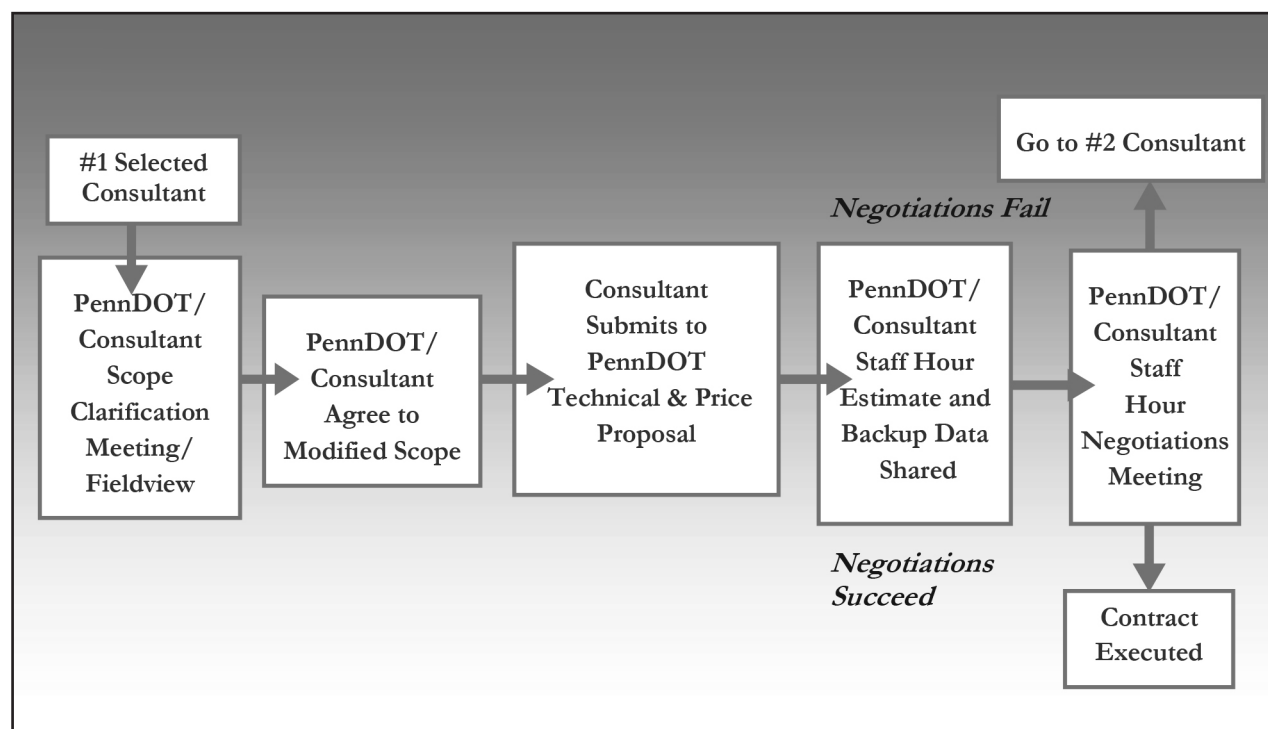
Regardless of the method, documentation is useful. As work on a project proceeds, issues may arise that were discussed during contract negotiations, or work may be added or deleted. Good documentation of the negotiations can avoid confusion during the project.

And, when organizations change staff or a new Project Manager takes over before a project is completed, the verbal agreement reached in contract negotiations may be lost unless they have been properly documented.

IV. NEGOTIATIONS PROCESS OUTLINE

- 1 **Initial Submittal by the Consultant.** – The top-ranked consultant will receive instructions for the submittal of comments on the scope of services, a detailed staff hour estimate, and a fee proposal (see Figure 4 below).

Figure 4
Negotiations Process





MUTUAL GAINS NEGOTIATIONS

Both the Department and consultant should ensure that the Scope of Services is clearly understood – before preparing the staff hour estimate. The estimate should include any/all changes to the initial scope identified during Scope Clarification.

PennDOT and the consultant, utilizing the Guide, will develop the staff hour estimates simultaneously. Care should be taken by both parties to provide clear and concise estimates, with detailed explanations and sufficient back-up to facilitate negotiations.

Once PennDOT and the consultant have completed their estimates of staff hours, a negotiations meeting can be established where each party shares their estimates with their business partner.

- 2 **Scope Clarification Meetings.** – Mutual Gains Negotiations places great emphasis upon both parties meeting and agreeing to the project complexity, scope, and mutual expectations of deliverables and plan presentation. PennDOT has developed a process that outlines the procedures to be followed to ensure that Scope Clarification meetings become a routine part of all contract negotiations.

The first step in contract preparations is to clearly understand the level of complexity and the expectations with regard to plan preparation and deliverables. It is understood that although a standard scope of services may be outlined through the WBS codes, some aspect of the scope may be negotiable. Both Project Managers must understand the scope and be prepared to clarify it as necessary in negotiations. A scoping meeting with all necessary technical experts will be held and all parties will mutually agree to the scope. In some cases, a field visit with key PennDOT and consultant staff prior to beginning negotiations may prove beneficial for complex projects.

Only after the scope is agreed to, the staff hours estimate will be prepared using the new Guide. For 80 percent of the projects, the staff hours for each task should fall within the accepted range as per the Guide and the overall time for contract execution should be significantly decreased.

- 3 **Negotiation of Scope of Services.** – The final negotiated scope of services should be tailored to ensure a mutual understanding of the project. During this negotiation process each task and sub-task should be discussed to determine how it is to be accomplished, the nature of the deliverable, and its format. If the consultant's understanding is not in accord with that of the Department, discussion should be conducted to arrive at a mutual understanding of the services to be accomplished, the method by which it will be accomplished, and the nature of the final product. Either party to the negotiations should feel free to request written confirmation in the form of modification of the scope to reflect agreed to terms.

The scope of services is one of the major factors affecting the fee for consultant services since it defines the nature and volume of work to be performed. A well written scope of services establishes tasks to be performed, materials to be delivered, meetings to be attended, schedule to be met, equipment that will be used, standards that will be followed, and responsibilities of both the consultant and the Department.

The detail established in the scope of services sets the stage for subsequent negotiations. A detailed and thorough scope of services leads to an understanding of the services needed to complete the assigned project as well as an understanding of the sequence of tasks to be accomplished. This allows for informed development of the staff-hour estimates and project fee.

- 4 **Negotiation of Work Effort.** – The object of this process is to ensure that the proposed staff hours are reasonable for the specific project. It is also critical to determine if a reasonable distribution of work among various levels of staff is proposed to ensure the most economical staffing commensurate with the complexity of the project.



MUTUAL GAINS NEGOTIATIONS

The staff hour estimates and associated backup information prepared by the Department and the Consultant should be shared with each other a minimum of two (2) days prior to the Negotiations Meeting. The estimates should be compared and the differences evaluated; and that evaluation should form the basis of discussion during the Negotiations Meeting. Discussions will be conducted with the Consultant to resolve differences between the Department and Consultant staff hour estimates. As with the entire negotiations process, a record of the key points discussed and the resulting resolution should be kept.

The basis for an accurate staff hour estimate is a well-developed scope of services. With such a basis, a series of tasks and sub-tasks may be readily identified as staffing elements. Those elements should be used for both the Department and Consultant estimates for ease of reconciliation.

The published typical ranges of staff hour effort in the Guide should be treated as only a beginning point. Each project must be evaluated separately to determine a fair estimate of required staff hours. The basis for the estimate should be the specific requirements for the project under consideration together with a history of actual staff requirements for past projects with similar requirements. Where specific requirements cannot be identified during the negotiation phase, a provisional estimate will be made to serve as the basis of the contract.

Following are the major items relating to work effort requiring negotiation:

- a. Scope Clarification Meeting Notes/Understanding
- b. Staff hours, overtime, survey crew days, etc.
- c. Levels of personnel required
- d. Distribution of work among levels of personnel
- e. Subconsultants (Quality of work effort, personnel)
- f. Delineation of work to be provided by consultant, the Department, or others

V. SUMMARY

Mutual Gains Negotiations is a collaborative approach to negotiating professional services agreements; involving a consensus building team approach to developing scope and associated level of effort. A mutual understanding of project scope and each other's interests is critical to success. The process is a partnership to overcome project challenges and achieve project goals.

Purpose:

The Pennsylvania Department of Transportation (PennDOT) utilizes consultants to perform various engineering and environmental services.

A Staff Hour Estimating Guide (the Guide) has been jointly developed by volunteers from PennDOT and ACEC/PA to capture institutional memory that might otherwise be lost. It is our intent to continually update the Guide in order that it reflect current practices and conditions.

The Guide has been developed to provide Department and Consultant Project Managers with detailed descriptions of the work effort to ensure consistent project scoping and the subsequent basis for staff hour ranges to complete nearly all WBS – based tasks.

The Guide provides guidance for the estimation of the level of effort required to complete various engineering tasks for individual projects. Each project must be evaluated on a project by project basis. It is acknowledged that some Staff Hour Estimates may appear to be too low, too high or overly broad. Again, these estimates are intended to serve as a starting point for the implementation of Mutual Gains Negotiations.



MUTUAL GAINS NEGOTIATIONS

How to Use This Guide

During the mandatory Scope Clarification meeting, it is expected that both Project Managers (Department and Consultant) will agree on the complexity of each task, and modifications to the scope outlined in the WBS Codes – tailoring them to the specific project at hand.

The Guide has been developed to provide Department and Consultant Project Managers with detailed descriptions of the work effort to ensure consistent project scoping and the subsequent basis for staff hour ranges to complete nearly all WBS – based tasks.

It is anticipated that the staff hours ranges presented herein will cover approximately 80 percent of project scenarios.

In order to utilize the Guide, refer to the WBS Codes assigned or planned for the project. The Staff Hour Range, coupled with its associated narrative, will serve as the starting point to be used by Department and Consultant forces in determining the level of effort required for various engineering services.

The Staff Hour Range in the Guide should be treated as a starting point in the development of estimating the level of effort required to each WBS code.

Distribution:

The Guide is maintained in electronic format in the ECMS References/File Cabinet link.

Revisions/Updates:

Revisions and updates to the Guide, as recommended by the PennDOT and ACEC/PA Co-Chairs responsible for the particular staff hour disciplines, will be made on a regular basis.

If you have a recommended change to the Staff Hour Estimating Guide, Mutual Gains methodology, or the associated training, please forward your comments to PennDOT at RAPdBPDMutualGains@pa.gov. PennDOT and ACEC/PA will jointly review and address your comments during the next release.

Once revisions and updates have been implemented, the announcement will be released by the Department in ECMS.



OS-600 (1-13)



pennsylvania
DEPARTMENT OF TRANSPORTATION

MEMO

DATE: Insert Date

SUBJECT: Negotiation Responsibility

TO: Insert Central Office Negotiation Engineer Name
Address
Address

FROM: Insert CMS Chief or BOPD Director Name
Address
Address

The Department's Publication 93, Policy and Procedures for the Administration of Consultant Agreements, Section 3.7.6 establishes delegation authority for Certified District Negotiators, Central Office Negotiation Engineers and the Contract Management Section Chief with maximum dollar amounts for agreements and supplements.

Publication 93 Section 3.7.6 also states that for agreements and supplements of \$6,000,000 or greater, negotiation authority may be delegated by the CMS Chief or the Bureau of Project Delivery Director by way of a delegate memo assigning negotiation authority to a specific Central Office Negotiation Engineer.

This memo is to document that you are being delegated negotiation authority for agreements and supplements equal to or greater than \$6,000,000. Please sign and indicate acceptance or otherwise below.

☐ Yes, I accept negotiation authority for agreements and supplements equal to or greater than \$6,000,000.

☐ No, I do not accept.

Signature

The Federal Highway Administration (FHWA) has tested¹ and issued guidance for state agencies receiving Federal Aid Highway Program (FAHP) funds to implement a Safe Harbor Indirect Cost (Overhead) rate for eligible and qualified consulting firms. This Safe Harbor overhead rate may be used by state agencies as a component of a risk-based oversight process. Eligible and qualified firms (consulting firms that provide engineering and design related services and meet the qualifications specified in an agreement advertised criteria) that choose to apply a safe harbor overhead rate must certify (Appendix 3H) an agreement to acquire a compliant job cost system described below and explained in detail in the AASHTO Uniform Audit and Accounting Guide (AASHTO Audit Guide) and Federal Acquisition Regulations (FAR) Part 31. Firms that previously had a FAR compliant overhead rate accepted by PennDOT, any other state or cognizant agency are not eligible to use a Safe Harbor overhead rate. Safe Harbor overhead rate submissions must be submitted thru ECMS. The Safe Harbor overhead rate submission review process will follow the same review process as a FAR compliant overhead rate submission. PennDOT will track and monitor all Safe Harbor overhead rate submissions for compliance with Federal cost principles in accordance with 23CFR 172.11(c)(2) as part of the usual ECMS overhead rate review process.

The following types of firms may qualify for a Safe Harbor Indirect Cost Rate:

- Consulting firms that lack financial expertise
- Consulting firms that lack financial resources to develop an indirect cost rate themselves or to hire a Certified Public Accountant (CPA) to develop an indirect cost rate for the firm
- New or start up consulting firms that do not have contract-related cost history
- Well established consulting firms that lack experience with federally funded contracts

The Compliant Job Cost System must include:

- A labor-charging accounting system designed to be compliant with the FAR and Cost Accounting Standards using the guidance provided in chapter 6 of the AASHTO Audit Guide.
- An accounting system which separates indirect costs and direct costs
- An accounting system which separates allowable and unallowable costs
- A compliant job cost system under general ledger control

Labor-charging system

The consultant must have a system in place that meets the criteria in chapter 6 of the AASHTO Audit Guide. All employees must keep timesheets for all hours worked including principals/owners. This applies to all size firms – even a one-person firm. Firms should have a written timekeeping policy, and a system should be in place for monthly labor and payroll reconciliations.

An accounting system which separates indirect costs and direct costs

In evaluating an engineering consultant's overhead, consulting firms should consider direct as well as indirect costs. A direct cost is any cost that can be identified specifically with a particular contract or project. Direct costs must be allocated/charged directly to the contract or project. All costs specifically identified with a project are direct costs of that project and may not be allocated to another project, either directly or indirectly. Finally, a cost may not be charged as direct and also be included in an indirect cost pool.

Indirect costs should be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. The engineering consultant must record indirect costs in accordance with Generally Accepted Accounting Principles (GAAP), or Other Comprehensive Basis of Accounting.

Federal Acquisition Regulation Part 31.202 provides guidance on direct costs. Federal Acquisition Regulation Part 31.203 provides guidance on indirect costs.

¹ Federal Highway Administration Test and Evaluation Program (TE-045)

An accounting system which separates allowable and unallowable costs

Management bears the sole responsibility for identifying, segregating and removing unallowable costs from all government contracts. This applies to direct costs, indirect costs, and any cost proposals that are submitted for government contracts. A cost is allowable when the cost is allocable, reasonable and complies with the cost principles of Federal Acquisition Regulation Part 31.

The consultant is responsible for accounting for costs appropriately and for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable and are allocable.

Chapter 7 of The AASHTO Audit Guide discusses the reasonableness and allowability of Labor Costs. Chapter 8 of The AASHTO Audit Guide provides FAR interpretations on the allowability of selected areas of costs.

Appendix C of The AASHTO Audit Guide provides a keyword index to the Federal Acquisition Regulation Part 31. It lists the type of cost, if it is generally allowable and a reference to the Federal Acquisition Regulation that is applicable.

FHWA Order 4470.1A requires a certification that the overhead rate does not include any unallowable costs.

A compliant job cost system which is general ledger driven

The job cost system should integrate with or otherwise reconcile to the financial accounting control accounts (general ledger accounts). It should record all direct labor and other direct costs, whether billable or not, to projects on a consistent basis.

The consulting firm should have a strong written internal control policy.

Internal Controls include the plans of the organization and the methods and procedures adopted by management to ensure that the firm's goals and objectives are met; that resources are used consistent with laws, regulations and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data are obtained, maintained, and fairly disclosed in reports.

Chapter 6.4 of The AASHTO Audit Guide provides guidance on the development of an effective internal control system. It paraphrases The Defense Contract Audit Agency (DCAA) issued Pamphlet No. 7641.90 (DCAAP 7641.90), *Information for Contractors*.¹⁴ The DCAAP provides useful guidance as referenced at FAR 31.002 and provides extensive guidance regarding labor-charging systems. Specifically, sections 2-301 through 2-302.2 provide guidance regarding the:

- Accounting system internal control,
- Labor charging system internal control,
- Timecard preparation methods, and
- Timekeeping policy

Table 6-1 of The AASHTO Audit Guide provides a checklist of the model characteristics of a labor charging system.

Compliance Components Schedule

1st Year Submission or subsequent years with no business revenue

- Safe Harbor Certification form (Publication 93 Appendix 3H)
- * FHWA Certification of Final Indirect Costs form (Publication 93 Appendix 3C)**
- AASHTO ICQ**
- Overhead Schedule with projected costs
- Policies (vacation and sick leave and bonus) or statement of policy status
- Description of existing accounting system deficiencies to developing a FAR compliant overhead rate and explanation of safe harbor overhead rate eligibility.
- Description of how deficiencies will be addressed specifically listing the components of an acceptable FAR compliant system.

2nd Year Submission

- All items listed in 1st year submission
- National Compensation Matrix (NCM)**
- Overhead Schedule with **actual** costs

3rd Year Submission and further years as needed

- All items listed in 2nd year submission
- Trial Balance

4th Year Submission (Graduated)

- PennDOT ECMS Overhead Information Bulletin checklist

*Note: This form is to be completed by an individual executive or financial officer of the consulting firm at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the overhead rate proposal submitted in conjunction with the agreement.

**Note: This form is accessible from the ECMS Overhead Information Bulletin accessible from the ECMS home page.



SAFE HARBOR OVERHEAD RATE CERTIFICATION

_____ is electing to use a SAFE HARBOR OVERHEAD RATE.

I, the undersigned, certify that:

- I have reviewed the PennDOT Safe Harbor Overhead Rate policy and the Compliant Job Cost System document.
- _____ has not had a Federal Acquisition Regulations Part 31 (FAR) compliant Overhead rate previously accepted by PennDOT, any other state or cognizant agency.
- _____ will provide PennDOT with a FAR compliant overhead rate after a maximum of three years in the Safe Harbor program unless approval is obtained from the Contract Management Section Chief to extend beyond three years..
- _____ will stand by the safe harbor overhead rate for the duration of affected agreements and will not expect additional reimbursement for amounts above the requested safe harbor rate based on any future audits.
- _____ agrees to develop and utilize a compliant job cost system that includes:
 - A FAR compliant labor tracking system that identifies direct and indirect time, paid time off and unallowable activities costs.
 - An accounting system which separates indirect costs and direct costs
 - An accounting system which separates allowable and unallowable costs
 - A compliant job cost system under general ledger control

*Signature: _____

*Name of Certifying Official (Print): _____

*Title: _____

Date of Certification (mm/dd/yyyy): _____

Safe Harbor Year: _____ Date of Safe Harbor First Year _____

*Note: This form is to be completed by an individual executive or financial officer of the consulting firm at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the overhead rate proposal submitted in conjunction with the agreement.

Contractual Violations

Major Violations – this includes the following example:

1. Fraud (intentional modification of data / information without supportive justification intended to deceive the recipient).
Sanction: Any violation calls for immediate debarment procedures.

Intermediate Violations – this includes the following as examples:

1. Inspector working without a PennDOT executed wage rate approval letter.
2. Inspector working in a classification for which they do not qualify. Inspector's resume has to support the check box in the Construction Inspection Qualification report – by month/year and specific work activity. Consultant firm needs to be prepared to stand behind the Inspector's qualifications statement.

Sanctions: (Prime Consultant)

First violation within a running two-year period is a written notification of violation and required submission of a corrective action plan by consultant within 30 days.

Second violation (the consultant can only get one violation at a time. Subsequent violations can only be issued on submissions after 30 days from previous violation) within a running two-year period is written notification of second violation and a warning that next occurrence is threemonth preclusion from submitting a Statement of Interest (SOI) as a prime or subconsultant on any PennDOT construction inspection project.

Third violation within a running two-year period is three-month preclusion from submitting a Statement of Interest as a prime or subconsultant on any PennDOT construction inspection project.

Fourth and subsequent violations within a running two-year period are twelve month preclusion from submitting a Statement of Interest as a prime or subconsultant on any PennDOT Construction Inspection Project.

Minor Violations – this includes the following as examples:

1. *Substitution made with less qualified personnel.* Substitutions needs to be equal to or better than the resume(s) submitted in the Statement of Interest. Consultant firm needs to be prepared to stand behind the skill set of the substitute.

Once a substitution has been approved, the next substitution would be based on the new individual's position not the original SOI individual. For example, if you request to substitute Joe as a TCI-2 for Sam who is a TCI-3 and it is approved, Joe would now be the person that could be substituted for not Sam.

2. *Working in classification not qualified for.* Inspector must maintain registration/certification for the pay classification for the duration of the project. In the event a certification lapses, the consultant firm must submit a revised, reduced wage rate approval letter for that reduced classification, noting the future effective date of the rate change. This revised wage rate approval must be executed by the Department prior to the lapse in certification or it is an intermediate violation.

Sanctions:

First violation within a running one-year period is a written notification of violation.

Second violation (a minimum of 30 days after receipt of notification of the first violation) within a running one-year period is written notification of second violation and required submission of a corrective action plan within 30 days.

Third violation within a running one-year period is written notification of third violation and a warning that next occurrence is three-month preclusion from submitting a Statement of Interest on any PennDOT construction inspection project.

Fourth and subsequent violation within a running one-year period is three-month preclusion from submitting a Statement of Interest on any PennDOT construction inspection project.

Subconsultants

The prime consultant has the responsibility to manage the subconsultant and conduct a cursory review of the subconsultant employee's resume on its face. (As presented without additional investigation.)

In the event of an Intermediate or Minor Violation, where the violation constitutes an error on its face or sub consultant's inspector is working without a PennDOT executed wage rate approval letter, both the prime and subconsultant are subject to the full sanction. However, if an Intermediate or Minor Violation occurs with a subconsultant that is not evident through a cursory review, including expiration of certifications, the sanctions listed above will be levied in full force to the subconsultant and at a 25 percent rate to the prime consultant (4 violations occur before the sanctions are implemented for the prime consultant).

Administrative Deficiencies

Districts are responsible for sending administrative deficiency letters. CO should be cc'd on all correspondence.

Administrative Deficiencies include the following as examples:

- **Justification for substitutions not provided.** The consultant should provide substitutes that are equal to or exceed the qualifications of the staff proposed in the Statement of Interest, as approved by the Department. The consultant must clearly describe the reason for the substitution request and must demonstrate that the substitute is equivalent or better based on one or more of the following:
 - Equal or Higher Pay Grade
 - Or***
 - Total Experience
 - Or***
 - Experience on that Type of Project

Once a substitution has been approved, the next substitution would be based on the new individual's position not the original SOI individual. For example, if you request to substitute Joe as a TCI-2 for Sam who is a TCI-3 and it is approved, Joe would now be the person that could be substituted for not Sam.

- **Incomplete/Invalid resume submittal.** Inspector resumes must clearly delineate, by month and year, and specific work activity, the skill set of the Inspector.
- **Incorrect Wage Rates.** Wage rates proposed outside the approved range for the classification.

- **Failure to properly sign and date all required submissions;**

Sanctions:

First violation within a running one-year period is a written notification of violation.

Second violation (a minimum of 30 days after receipt of notification of the first violation) within a running one-year period is written notification of second violation and the required submission of a corrective action plan within 30 days.

Third and subsequent violations – the number and severity of administrative deficiencies will be considered when the Department completes the “Consultant Performance Report.”

Appeal Process

Upon notification of an Intermediate, Minor, or Administrative Violation by the Department, the consultant firm may request an Administrative Review of the particular circumstances of the violation. The consultant has a period of up to 21 working days to request an Administrative Review. This Review will be chaired by the Bureau Director for Project Delivery and be attended by consultant firm, PennDOT Central Office Staff, and ACEC/PA's Executive Vice President. The intent of this Review, while it is not a legal hearing, is to determine the validity of the violation by a third party. If the violation is found to have merit and stand, the consultant firm will be required to accept the designated sanction. If the violation is found to be without merit, the violation will be expunged from the consultant firm's record with the Department. In the event that the consultant is not satisfied with the outcome of the Administrative Review, they may at their option, request a formal hearing.

This Administrative Review process is available to the consultant firm at any point during the sanction process, in order to ensure that the terms of the Contract at issue are clearly understood by both parties.

Stay in Timeframe

In the event of an Intermediate or Minor Violation, or Administrative Deficiency, and the consultant requests an Administrative Review or formal hearing, there will be a stay in the timeline until the Review process is completed.



GUIDELINES TO DETERMINE WHEN FEE SHOULD BE INCLUDED IN A SUPPLEMENTAL AGREEMENT (COST PLUS FIXED FEE AGREEMENT)

The following general guidelines are presented to assist in determining if the work covered by a proposed supplement is **Extra Work** (Fee Included) or **Additional Effort** (No-Fee Included). **Extra Work** is defined as additional hours for work tasks outside the current Scope of Work. **Additional Effort** is defined as additional hours for work tasks within the current contracted Scope of Work.

EXTRA WORK (Fee Included):

- **A new part or phase is added to a project specific agreement and/or expanded work activities.**
Example: Adding expanded work that was not fully included in the original scope because of ambiguities or budget issues.
- **New WBS tasks or subtasks are added to any Contract Part.**
Example: Adding Phase 2 or 3 archeology.
- **Large units of work are added and/or substantially increased.**
Example: New bridges, culverts, walls, signalization, etc.
- **There is a substantial change in the limits (boundary/study area) of the project.**
- **Identifiable complexity is added.**
Example: Change of structure type, e.g. box culvert to bridge, change from BRADD to conventional design.

ADDITIONAL EFFORT (No-Fee Included):

- **None of the conditions above are met.**
- **It is taking more time (level of effort) than anticipated to complete the original scope.**
- **Both the consultant and the Department agree that the Additional Effort is within the spirit of the original scope of work.**

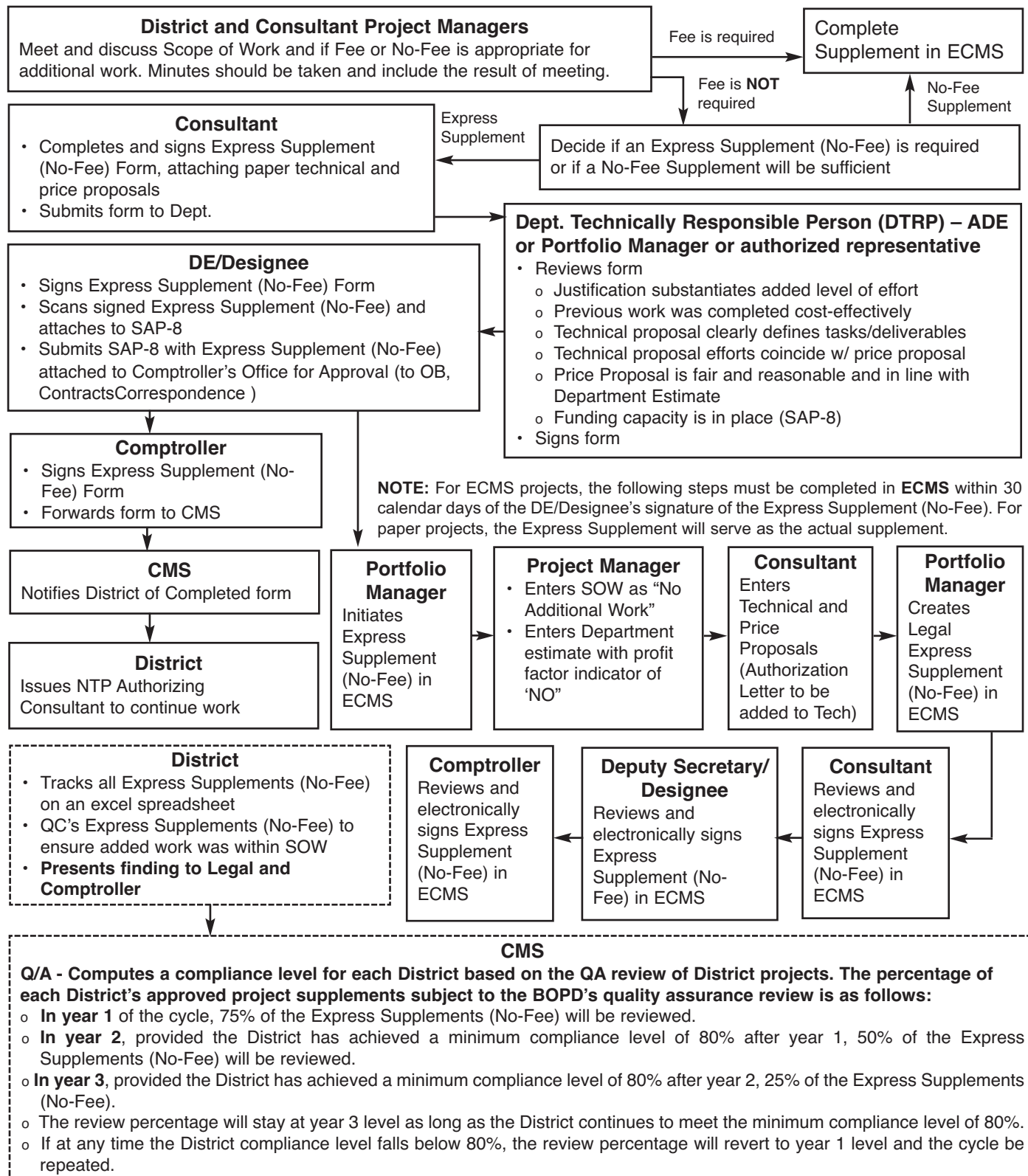
The examples presented are not exclusive. The intent of these guidelines and examples is to provide guidance that is both fair to all parties while remaining flexible enough to be applied to the various situations that arise during the life of a contract. The goal is to reach consensus between PennDOT and consultant team prior to moving forward using the Supplement or Express Supplement (No-Fee) process.

If consensus cannot be reached, either party can request a review by the CMS Chief. If a disagreement is still pending, the Highway Administration Bureau Director, Project Delivery or delegate, may be requested to act as an arbitrator to resolve the dispute.

EXPRESS SUPPLEMENT (NO-FEE) PROCESS FLOW

[Appendix 4C](#)
Publication 93 (12-16)

Consultants are responsible to continuously evaluate the status of their agreement to ensure that sufficient resources are available to complete the scope of work in the agreement. The consultant must evaluate the status of the Consultant Agreement when any Category of Compensation of the Consultant Agreement reaches 75% of the maximum amount of the agreement to see if the agreement can be completed without exceeding the maximum amount. If additional compensation is needed, the following process shall be followed:





EXPRESS SUPPLEMENT (NO-FEE) (AUTHORIZATION FOR CONSULTANT CONTRACT WORK)

Agreement Number: _____ Part: _____ Expiration: _____

District: _____ County: _____ SR: _____ Section: _____

SPN: _____ Allot.: _____ FPN: _____

Consultant: _____ Term Modification Number ES-_____

Justification (Why is additional level of effort required?) _____

You are hereby authorized to perform the work described below:

☐ **Exhibit A – Technical Proposal Attached**

☐ **Exhibit B – Price Proposal Attached**

Note: A change in contract time may be warranted as a result of the additional effort described above. Time Extensions should be discussed with the PennDOT Project Manager and an official request submitted as required.

Existing Agreement Amount _____ Existing Part Amount _____

Additional Work Authorized _____ Revised Part Amount _____

Revised Agreement Amount _____

☐ **SAP-8 Attached**

☐ No Cost Transfer from _____

Direct/Indirect Payroll Cost	Direct Cost Other Than Payroll	Direct Cost By Others	Total

The following Representatives certify that the Additional Effort is justified and will be completed with quality and cost effectiveness:

1. CONSULTANT REPRESENTATIVE (A President, Vice President, Partner or Owner) X _____ Signature Date _____ Title	2. DEPARTMENT TECHNICALLY RESPONSIBLE PERSON X _____ Signature Date _____ Title Contact Number
3. DISTRICT EXECUTIVE (or Authorized Representative) X _____ Signature Date _____ Title	4. COMPTROLLER (or Authorized Representative) X _____ Signature Date _____ Title

Upon signature, please forward to next Representative. Comptroller, Please forward to Contract Management Section (fax 717-705-2378) who will notify District of Express Supplement approval.



EXAMPLE QUALITY CONTROL CERTIFICATION FOR EXPRESS SUPPLEMENT (NO-FEE)

The Project Manager will compile a list of all Express Supplements (No-Fee) for each calendar year on the attached spreadsheet.

The _____ will review all Express Supplements (No-Fee) to ensure:

- All added work is within the current Scope of Work for the Agreement
- Supplement was completed in ECMS within 30 calendar days of the DE/Designee's signature of the Express Supplement (No-Fee)

The listing for each calendar year and Quality Control Review for each Express Supplement (No-Fee) in that calendar year will be forwarded to the Contract Management Section by January 31 of the following year for Quality Assurance.

Technically Responsible Person

Date

ADE

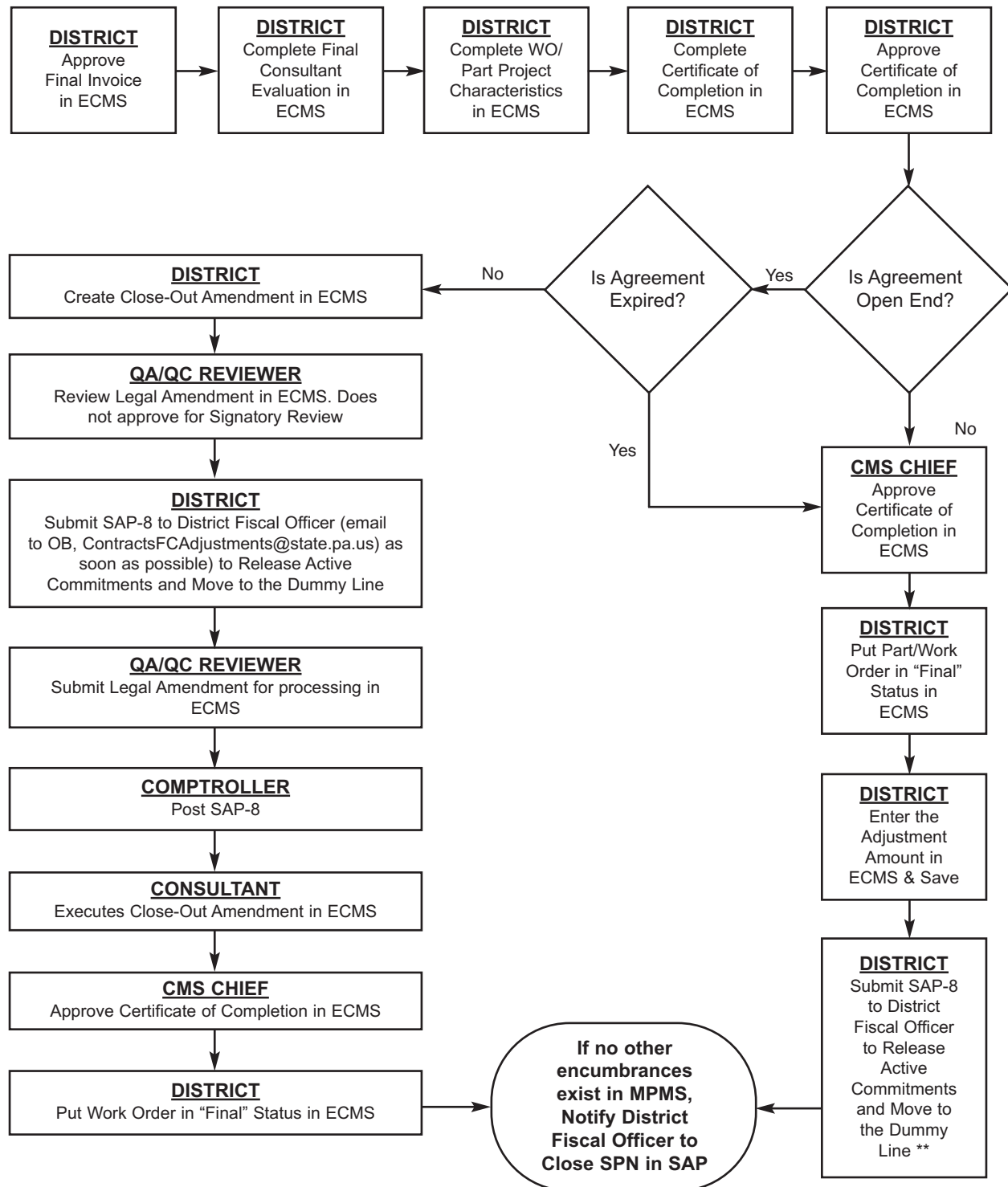
Date

CMS Q/A - Computes a compliance level for each District based on the QA review of District projects. The percentage of each District's approved project supplements subject to the BOPD's quality assurance review is as follows:

- o **In year 1** of the cycle, 75% of the Express Supplements (No-Fee) will be reviewed.
- o **In year 2**, provided the District has achieved a minimum compliance level of 80% after year 1, 50% of the Express Supplements (No-Fee) will be reviewed.
- o **In year 3**, provided the District has achieved a minimum compliance level of 80% after year 2, 25% of the Express Supplement (No-Fee).
- o The review percentage will stay at year 3 level as long as the District continues to meet the minimum compliance level of 80%.
- o If at any time the District compliance level falls below 80%, the review percentage will revert to year 1 level and the cycle be repeated.



PROCEDURES FOR CLOSING OUT ELECTRONIC PARTS / WORK ORDERS



** If Agreement and all Parts/ Work Orders are expired, submit one SAP-8 w/ all Parts/Work Orders listed w/ negative amounts without moving any funds to the Dummy Line.

Appendix 4G
Publication 93 (12-16)

Working Period		Inspector Name	Reporting/Project Location:
Start Date		Home Address	Vehicle(s) Description:
End Date		Mileage Rate _____ Mileage Home to Assigned Reporting Location (Shortest route) (Year, Make, Model, License Plate #)	

Time Period			Hours		DESTINATION		ODOMETER READING		Billable Miles	STATUS	Toll ✓ if yes	Field Location / Assignment / Remarks
DATE	Begin Work	End Work	Straight	OT	FROM	TO	START	STOP				
										Commute		
										OJM/Field		
										Commute		
										Commute		
										OJM/Field		
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										OJM/Field		
										Commute		
										Commute		
										OJM/Field		
										Commute		

Total Hours	Straight	OT	Total Billable OJM Miles ¹	
			Total Billable Commute Miles ²	
			Total Billable Miles ³	

Inspector's Name Printed: _____

Inspector's Signature: _____

Supervisor's Name Printed: _____

Supervisor's Signature: _____

Inspector's Firm _____

DATE: _____

DATE: _____

Dept. Representative's Name Printed: _____

Dept. Representative's Signature: _____ DATE: _____

- 1) Billable On-the-Job-Miles (OJM or Field Miles): Should not include miles solely travelled to and from lunch.
- 2) Billable Commute Miles: Shortest distance from home to project site minus 15 miles in each direction (or a total of 30 non-billable commute miles) up to a total of 150 billable miles daily (up to 75 miles each way).
- 3) If Lodging is utilized in lieu of commuting, enter the odometer reading but enter zero miles for the day in Billable Commute Miles block. Expenditures documented separately.

Lesson 5

Monitoring the Project’s Budget and Spending



Appendix 4H From Training Guide for “Managing Consultants” course –
Lesson 5 – “Monitoring the Project’s Budget and Spending”

Understanding the Project Budget

Why is a budget important?

It assures that throughout the course of the project money is spent at a reasonable rate and that the remaining funds are adequate to carry out the remaining work.

The Project Manager should review the final, agreed-upon:

- Total project cost
- Cost per task, and
- Estimated hours per task

The Project Manager works with the District’s Planning & Programming Manager to confirm that:

- Contract paper documents, ECMS and SAP match and are accurate regarding dollars by task/line item by year, and
- That the costs per year are in line with the TYP (Twelve-Year Program).

The Project Manager must be aware of the available budget by fiscal year, and may need to know the source of project funding (federal, state or mix).

- In some Districts, the Project Managers work closely with the Planning & Programming Manager to set up the fiscal documents for a project. In this case, the Project Manager is very familiar with the different funding sources and budgeted dollars by year.
- In contrast, other Districts’ Project Managers are not involved in preparing the fiscal documents for a project, and they only need to be aware of the planned spending by fiscal year.

The Project Manager also needs to be aware of the Disadvantaged Business Enterprise (DBE) goal set for the project. Within ECMS, the percentage of participation by a DBE can be viewed based on invoicing.

- It is the responsibility of the consultant Project Manager (prime consultant) to closely monitor and ensure that the DBE goal is met or exceeded.
- PennDOT’s Project Manager should help the consultant, if necessary, to meet the goal as the project changes and the original planned work changes for the DBE.

Appendix 4H From Training Guide for “Managing Consultants” course –
Lesson 5 – “Monitoring the Project’s Budget and Spending”

Paying ECMS Invoices

General Process

Regardless of the type of Agreement, all invoices from consultants are submitted and processed in the same general manner. Following is the general process used to pay invoices; some details vary by District.

1. Each subconsultant submits an invoice to the prime consultant.
2. The prime consultant approves each subconsultant invoice within ECMS.
3. After all subconsultant invoices are in “Supervisor Firm Approved” status, the prime consultant then submits their invoice to the Department.
 - All invoices (prime and all subconsultants) are submitted together to be reviewed by the Department.
 - There may be occasions when the prime consultant does not have costs for a particular invoice, but submits its invoice (for \$0.00) with any invoices from subconsultants.
4. ECMS generates an email notification and a work queue item to the Project Manager that an invoice has been submitted.
 - The invoice is found within the Project Manager’s work queue in ECMS.
 - The Project Manager can review all invoice entry values, to-date reports, and user-entered comments online for any invoice.
5. If the Project Manager does not attend to the invoice within seven days, ECMS creates a work queue item for the Project Manager’s supervisor.

Appendix 4H From Training Guide for “Managing Consultants” course –
Lesson 5 – “Monitoring the Project’s Budget and Spending”

6. The Project Manager performs one of the three following actions:
- Approve, or recommend for approval, the package of invoices, **OR**
 - **Note that the individual who approves invoices must have a signature authority card on file in the Comptroller’s Office.**
 - Also, approval procedures vary among the Districts. Some Districts allow their Project Managers to approve invoices, while another District may use a two-step process where the Project Manager reviews the invoices but then sends them to another Senior Project Manager to actually approve.
 - Reject an individual subconsultant invoice but approve remaining invoices, **OR**
 - Reject the prime consultant’s invoice
- Two options exist for resolving issues with invoices:
- Reject/Revise – allows the consultant to revise their invoice and resubmit it
 - Use this option if a minor change is required on the invoice as the consultant will not have to redo the entire invoice.
 - This option removes the invoice from the Project Manager’s queue and sends it back to the consultant.
 - Reject/Reject – places the invoice in a “rejected” status and it cannot be edited or resubmitted
 - If the prime consultant’s invoice is rejected, the underlying subconsultant invoices are “unlinked” and remain in “Awaiting Supervising BP Submission” status. When the prime consultant submits a replacement invoice, then all invoices are automatically re-packaged for approval.
 - This option removes the invoice from the Project Manager’s queue and sends it back to the consultant.
- NOTE: You cannot accept a subconsultant’s invoice when you reject the prime consultant’s invoice.
7. After the invoice is approved, ECMS automatically takes the next steps to create and send a payment through SAP to the Comptroller’s Office.
- If the funding does not match between SAP and ECMS, an error displays on the payment information. PennDOT’s Project Manager receives a notice in their ECMS work queue and must work with their District Fiscal Officer to correct the funding error.
 - It may be necessary to confirm within SAP the current fiscal year remaining encumbrance before approving the invoice in ECMS. ECMS approves invoices based on the total work order price and remaining dollars; whereas, SAP pays invoice amounts based on the remaining encumbrance for the current fiscal year.
8. The Comptroller’s Office, in turn, forwards the invoice to Treasury for payment.

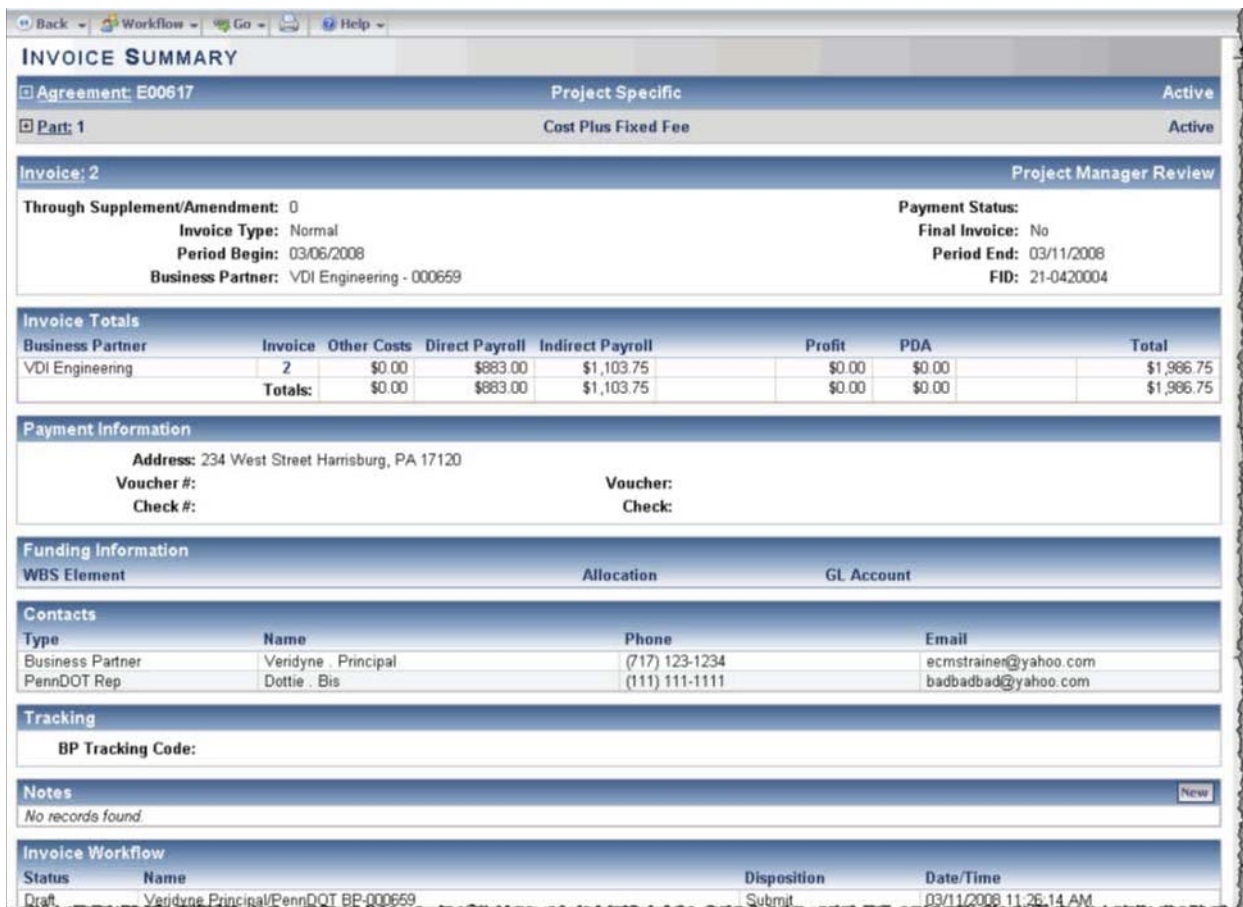
Appendix 4H From Training Guide for “Managing Consultants” course – Lesson 5 – “Monitoring the Project’s Budget and Spending”

9. Payments are sent to the prime consultant.

- The prime consultant is responsible for forwarding payment to subconsultants within 14 days.
- Likewise, the Department is also expected to follow prompt payment practices. (Prompt Payment Act requires the Department to pay within 30 days.)

Reviewing ECMS Invoices

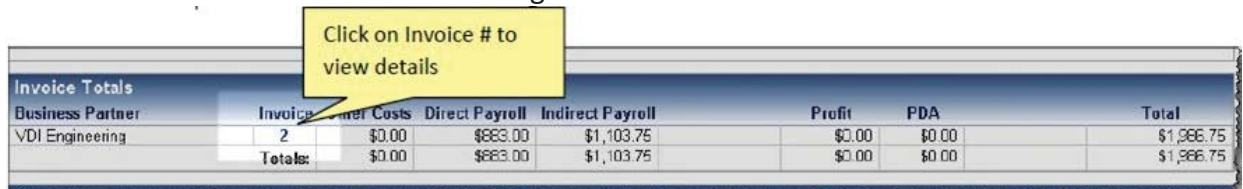
After an invoice is selected from the Project Manager’s work queue, the Invoice Summary screen displays.



The screenshot shows the 'INVOICE SUMMARY' screen in a web application. It includes sections for Agreement (E00617), Part (1), Invoice (2), and Project Manager Review. The Invoice Summary table shows details for VDI Engineering, including Invoice # 2, Other Costs, Direct Payroll, Indirect Payroll, Profit, PDA, and Total. The total amount is \$1,986.75. The screen also displays Payment Information, Funding Information, Contacts, Tracking, Notes, and Invoice Workflow.

INVOICE SUMMARY							
Agreement: E00617		Project Specific		Active			
Part: 1		Cost Plus Fixed Fee		Active			
Invoice: 2		Project Manager Review					
Through Supplement/Amendment: 0		Invoice Type: Normal		Payment Status:			
Period Begin: 03/06/2008		Business Partner: VDI Engineering - 000659		Final Invoice: No			
				Period End: 03/11/2008			
				FID: 21-0420004			
Invoice Totals							
Business Partner	Invoice	Other Costs	Direct Payroll	Indirect Payroll	Profit	PDA	Total
VDI Engineering	2	\$0.00	\$883.00	\$1,103.75	\$0.00	\$0.00	\$1,986.75
Totals:		\$0.00	\$883.00	\$1,103.75	\$0.00	\$0.00	\$1,986.75
Payment Information							
Address: 234 West Street Harrisburg, PA 17120							
Voucher #:				Voucher:			
Check #:				Check:			
Funding Information							
WBS Element	Allocation			GL Account			
Contacts							
Type	Name	Phone	Email				
Business Partner	Veridyne - Principal	(717) 123-1234	ecmstrainer@yahoo.com				
PennDOT Rep	Dottie - Bis	(111) 111-1111	badbadbad@yahoo.com				
Tracking							
BP Tracking Code:							
Notes							
No records found.							
Invoice Workflow							
Status	Name	Disposition	Date/Time				
Draft	Veridyne Principal/PennDOT BP-000659	Submit	03/11/2008 11:26:14 AM				

Scroll down to the **Invoice Totals** heading to view the invoice detail.

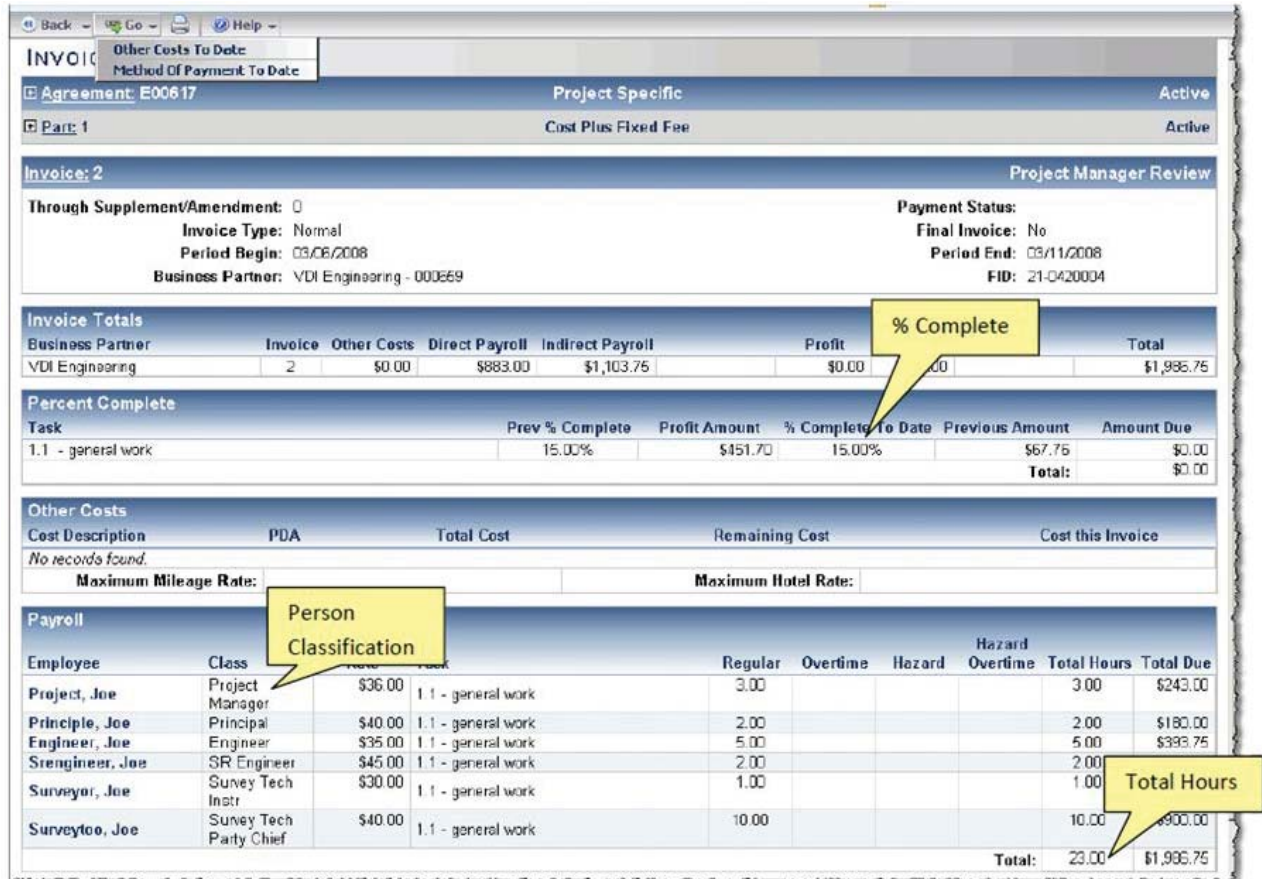


A callout box points to the 'Invoice' column in the 'Invoice Totals' table, indicating that clicking on the invoice number (2) will view details.

Invoice Totals							
Business Partner	Invoice	Other Costs	Direct Payroll	Indirect Payroll	Profit	PDA	Total
VDI Engineering	2	\$0.00	\$883.00	\$1,103.75	\$0.00	\$0.00	\$1,986.75
Totals:		\$0.00	\$883.00	\$1,103.75	\$0.00	\$0.00	\$1,986.75

Appendix 4H From Training Guide for “Managing Consultants” course – Lesson 5 – “Monitoring the Project’s Budget and Spending”

Click on the **Invoice Number** hyperlink under the **Invoice** column. The Invoice Detail screen is displayed:



INVOICE Other Costs To Date
Method Of Payment To Date

Agreement: E00617 Project Specific Active
Part: 1 Cost Plus Fixed Fee Active

Invoice: 2 Project Manager Review

Through Supplement/Amendment: 0
Invoice Type: Normal
Period Begin: 03/06/2008
Business Partner: VDI Engineering - 000659
Payment Status: No
Final Invoice: No
Period End: 03/11/2008
FID: 21-0420004

Business Partner	Invoice	Other Costs	Direct Payroll	Indirect Payroll	Profit	% Complete	Total
VDI Engineering	2	\$0.00	\$883.00	\$1,103.75	\$0.00	15.00%	\$1,986.75

Task	Prev % Complete	Profit Amount	% Complete To Date	Previous Amount	Amount Due
1.1 - general work	15.00%	\$451.70	15.00%	\$67.75	\$0.00
Total:					\$0.00

Other Costs
Cost Description PDA Total Cost Remaining Cost Cost this Invoice
No records found.
Maximum Mileage Rate: Maximum Hotel Rate:

Employee	Class	Rate	Task	Regular	Overtime	Hazard	Overtime	Total Hours	Total Due
Project, Joe	Project Manager	\$36.00	1.1 - general work	3.00				3.00	\$243.00
Principle, Joe	Principal	\$40.00	1.1 - general work	2.00				2.00	\$180.00
Engineer, Joe	Engineer	\$35.00	1.1 - general work	5.00				5.00	\$393.75
Srengineer, Joe	SR Engineer	\$45.00	1.1 - general work	2.00				2.00	
Surveyor, Joe	Survey Tech Instr	\$30.00	1.1 - general work	1.00				1.00	
Surveytoo, Joe	Survey Tech Party Chief	\$40.00	1.1 - general work	10.00				10.00	\$400.00
Total:				23.00				23.00	\$1,986.75

What to look at:

- Do the hours spent match what you expect based on the completion status of tasks?
- Does the completion percentage on the invoice reflect the progress of the project within Asta?
 - Cost expenditures and schedule progress should closely match. If expenditures are outpacing progress, the Project Manager should investigate the reason.
 - The ECMS Rollup Report shows the original hours versus the used hours to date, and compares the percentage of budget used to the percentage of hours used.

Appendix 4H From Training Guide for “Managing Consultants” course –
Lesson 5 – “Monitoring the Project’s Budget and Spending”

- When the overall labor and direct costs reach 75% completion, ECMS displays a warning message on the Invoice Summary screen.

 Total payroll is greater than 75% of total payroll for the Part/WO for the Business Partner.	Total payroll is greater than 75% of total payroll for the Part/WO.
--	---

- It is important to review the item to determine how closely money spent matches the expected expenditures and the effort remaining on that task.
 - The Project Manager will receive notification from the consultant on whether or not the project will be completed within the budget (shows in Comment section of invoice).
 - The Project Manager should ensure that the consultant has made the “can complete within remaining budget” comment before approving the invoice. If the comment is not made, the Project Manager should Reject/Revise the invoice (even though technically ECMS will let you approve the invoice).
 - Consider whether the 75% completion is an indication of the overall project’s progress.
 - Take the opportunity to discuss with the consultant the overall project’s status (budget and schedule) to determine if a supplement/amendment may be needed.
- Is the work being completed by personnel with experience best matched to the tasks?
- ECMS will prompt the Consultant with a warning message when the Consultant submits an invoice having reached 50% of their payroll budget for the Part/Work Order. ECMS will prompt the Consultant with a second warning message when the Consultant submits an invoice having reached 75% of their payroll budget for the Part/Work Order. At the 75% warning, a workflow comment is required to be entered by the Consultant to indicate their ability to complete the Part or Work Order within the constraints of the current budget.
- Warning messages will be displayed for the PennDOT PM when the Consultant’s payroll amount on an invoice exceeds 50% and 75% of their budget for the Part/Work Order. A separate warning message is displayed if the payroll amount for the invoice exceeds 50% of the entire Part/Work Order budget. At the 75% warning, a workflow comment is required by the PennDOT PM to respond to the consultant’s ability to complete the Part or Work Order within the current budget and to indicate if a supplement will be required.

Appendix 4H From Training Guide for “Managing Consultants” course – Lesson 5 – “Monitoring the Project’s Budget and Spending”

Click on the down arrow in the **GO** button on the toolbar to view To Date reports:

- Other Costs To Date
- Method of Payment (Approved or Submitted)
- Profit To Date

Select **Other Costs to Date**. The Review Other Costs to Date screen is displayed:

REVIEW OTHER COSTS TO DATE			
☐ Agreement: E00667		Open End /Non Project Specific	Active
☐ Work Order: 5		Specific Rate of Compensation	Active
McCormick Taylor, Inc.			
Other Cost Name	Other Costs Budgeted	Other Cost to Date	% Other Costs Claimed
Color Copies	200.00	0.00	0.00%
Color Copies	150.00	0.00	0.00%
Color Xerox	150.00	93.81	62.54%
Color Xerox	200.00	0.00	0.00%
Lodging	159.00	0.00	0.00%
Lodging	106.00	74.20	70.00%
Lodging	53.00	0.00	0.00%
Lodging	106.00	0.00	0.00%
Meeting Space Rental	250.00	0.00	0.00%
Mileage	431.20	79.44	18.42%
Mileage	324.00	137.28	42.37%
Mileage	259.20	42.24	16.30%
Mileage	705.20	544.10	77.16%
Parking	300.00	299.00	99.67%
Parking	336.00	33.00	9.82%
Parking	300.00	116.00	38.67%
Parking	200.00	155.00	77.50%
Per Diem	72.00	0.00	0.00%
Per Diem	56.00	19.22	34.32%
Reproduction	70.00	0.00	0.00%
Reproduction	70.00	0.00	0.00%
Reproduction	70.00	0.00	0.00%
Reproduction	70.00	0.00	0.00%
Subsistence	56.00	0.00	0.00%
Subsistence	28.00	0.00	0.00%
Team Totals			
	Other Costs Budgeted	Other Costs Claimed	% Other Costs Claimed
Team Total	4,941.60	1,602.04	32.42%

What to check:

- Do charges seem appropriate?
 - For example, has the consultant charged mileage before any site visits have been made?

Appendix 4H From Training Guide for “Managing Consultants” course – Lesson 5 – “Monitoring the Project’s Budget and Spending”

Go back to the Invoice Detail screen, and select **Method of Payment** from the **GO** button on the toolbar.



SYSTEM TEST
pennsylvania
DEPARTMENT OF TRANSPORTATION

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MICHELE L. FULLMER

COST PLUS FIXED FEE TO DATE

Agreement: E00645		Open End /Non Project Specific		Active	
Name: Agreement to test the defect 17813		Selection Process: Modified		Initiating Org: Engineering District 8-0	
☐ Work Order: 1		Cost Plus Fixed Fee		Active	
Description: This is just for the Testing Purpose		PennDOT Project Manager: Mandadi, Ravi .		Phase: Construction Inspection	

Gamma, Gamma & Bamma							
Task	Direct/Indirect Budget	Direct/Indirect To Date	% Budget Used	Hours Budget	Hours To Date	% Hours Used	% Task Complete
1.1 - Detail Task1	\$1,941.98	\$250.00	12.87%	40.00	4.00	10.00%	0.00%
Gamma, Gamma & Bamma Total	\$1,941.98	\$250.00	12.87%	40.00	4.00	10.00%	0.00%

Consultant 380							
Task	Direct/Indirect Budget	Direct/Indirect To Date	% Budget Used	Hours Budget	Hours To Date	% Hours Used	% Task Complete
1.1 - Detail Task1	\$6,168.96	\$5.54	0.09%	28.00	0.01	0.04%	0.00%
Consultant 380 Total	\$6,168.96	\$5.54	0.09%	28.00	0.01	0.04%	0.00%

Team Totals							
	Direct/Indirect Budget	Direct/Indirect To Date	% Budget Used	Hours Budget	Hours To Date	% Hours Used	% Task Complete
Team Total	\$8,110.94	\$255.54	3.15%	68.00	4.01	5.90%	0.00%

What to check:

- Look at the budget spent to date
- Look at the percentage of budget used on each line item
- Review the last column on the report – the information comes off the Profit Report and gives the percentage complete for the task

Appendix 4H From Training Guide for “Managing Consultants” course –
Lesson 5 – “Monitoring the Project’s Budget and Spending”

Additional Tips for Reviewing Invoices

- Watch that you are not billed “in advance” for work.
 - For example, 100% of money is being invoiced for development of right-of-way plans but you do not have the actual, final right-of-way plans in hand.
- Does the percentage complete (money spent) reflect the percentage complete within Asta?
- Communicate with the consultant if you see that money is being spent more quickly than expected.
 - Has an issue come up that you need to be aware of? You need to develop a relationship with the consultant so that they feel comfortable informing you of potential or known issues and possible budget impacts as soon as the situation surfaces.
 - You do not want the consultant waiting to inform you of issues until a project’s budget hits the 75% completion point.

Appendix 4H From Training Guide for “Managing Consultants” course –
Lesson 5 – “Monitoring the Project’s Budget and Spending”

Monitoring DBE Participation

Prime Consultant’s Role

The prime consultant is responsible to keep records of DBE participation levels for the original Agreement and each supplement/amendment.

- Information on DBE participation levels is provided to the Department when requested.
- Final DBE participation amounts are determined through an audit of the prime consultant.

Central Office’s Role

Central Office’s Consultant Agreement Section completes a monthly report and submits it to PennDOT’s Bureau of Equal Opportunity. This is required to comply with the record-keeping requirement set forth in Title 49 Code of Federal Regulations Part 26.

Central Office’s Consultant Agreement Section also maintains each fiscal year’s cumulative totals of executed DBE contract amounts.

District Office’s Role

Each District must monitor the DBE participation for each active Agreement.

- Consider that DBE participation will vary as a project develops with regard to tasks that have been assigned to DBE consultants.
- Although current DBE participation levels may not conform to the advertised requirement, future tasks could allow for conformance.
- If an indication exists that the DBE is *not* performing or controlling work as identified in the consultant’s proposal, then appropriate personnel from the District Office should discuss this with the DBE and prime consultant.
- Within ECMS, DBE participation levels can be seen on the Agreement Summary screen, as shown below:

DBE Information	
Current DBE Goal: 7%	Original DBE Goal: 7%
Original DBE Commitment: 0.00%	Original DBE Commitment Amt: \$0.00
Current DBE Commitment: 70.28%	Current DBE Commitment Amt: \$7,358.96
Current DBE Achieved: 0.00%	Current DBE Achieved Amt: \$0.00

Consultants are responsible to continuously evaluate the status of their agreement to ensure that sufficient resources are available to complete the Scope of Work in the agreement. A Supplemental Agreement allows PennDOT to change any terms and conditions of an existing Consultant Agreement where warranted. There are different supplements types corresponding to different circumstances. The chart below provides guidance to selecting the appropriate supplement type. Generally speaking, they are listed in order of the level of review needed to execute the legal agreement for each agreement type (with normal supplements having the highest number of reviewers). When supplements are time sensitive the IO is encouraged to contact the Contract Management Section (CMS) to request a possible expedited review. The CMS will assist in coordinating the review process to expedite the signature approvals.

AGR Type	Desired Action	Supplement Type	Estimated Time from Set-up to Execution	Corresponding Pub 93 Section
PROJECT SPECIFIC	• Change Scope of Work (SOW) • Add funds to complete existing SOW • Transfer funds between firms where net dollar change for each Part $\neq$ \$0 • Transfer funds between Categories of Compensation where net dollar change for each Part $\neq$ \$0 • Consultant Agreement Close-Outs • Add Subconsultant	Normal	4-5 Weeks	(refer to section 4.4.2)
	• Add or transfer funds for existing SOW when profit factor is zero.	No Fee	2-3 Weeks	(refer to section 4.4.5)
	• When a No-Fee Supplement needs to be made in an expedited manner, a signed paper Express Supplement (No-Fee) will allow the consultant to continue to work on a project before a "No-Fee" supplement can be completed in ECMS. • Add or transfer funds for existing SOW when Profit factor is zero. • For ECMS projects, a no fee supplement must be established in ECMS within 30 calendar days of the DE/Designee's signature of the Express Supplement (No-Fee)	Express Supplement (No Fee)	Approximately 5 Working Days	(refer to section 4.4.6)
	• Transfer Funds between Firms where net dollar change for each Part is \$0 • Transfer Funds between Categories of Compensation where net dollar change for each Part is \$0	Administrative	1-2 Weeks	(refer to section 4.4.4)

OPEN END	• Add funds to Open End Agreement	Normal	4-5 Weeks	(refer to section 4.4.2)
	• Change Scope of Work (SOW) • Add Funds to complete existing SOW • Transfer Funds between Firms • Transfer Funds between Categories of Compensation • Work Order Close-Outs • Add Subconsultant to a Work Order	Work Order Amendment	2 – 3 Weeks	(refer to section 4.5.12)
	• Add Subconsultant to an Open End Agreement	Administrative	1-2 Weeks	(refer to section 4.4.4)

*** Actual timeframes will depend upon the circumstances of the supplement or amendment changes. For more information or to request a supplement or amendment be expedited please contact the Contract Management Section**



ADVANCED NOTICE TO PROCEED (ANTP)

[Appendix 4J](#)

Publication 93 (2-18)

Agreement Number: _____ Work Order: _____ Amendment: _____

District: _____ County: _____ SR: _____ Section: _____

SPN: _____ Allot.: _____ FPN: _____

Consultant: _____

You are hereby authorized to perform the work described below in accordance with this Advanced Notice to Proceed:

☐ Exhibit A – Technical Proposal Attached ☐ Exhibit B – Price Proposal Attached

☐ It is anticipated that funds are available for this work.

Original Work Order Amount _____

Work Order Amendment Amount _____

The following Representatives certify that the consultant is granted Advanced Notice to Proceed as of the date the District Executive (or Authorized Representative) signs this form:

1. CONSULTANT REPRESENTATIVE (A President, Vice President, Partner or Owner) X _____ Date _____ _____ Title _____	2. DEPARTMENT TECHNICALLY RESPONSIBLE PERSON X _____ Date _____ _____ Title _____ Contact Number _____
3. DISTRICT EXECUTIVE (or Authorized Representative) X _____ Date _____ _____ Title _____	

Upon signature, please forward to next Representative. District, Please forward to Consultant Agreement Section (fax 717-783-6412) for their records

The District Project Manager and Consultant Project Manager must execute the work order in ECMS within 60 days of Advanced Notice to Proceed Date.



CONFIDENTIALITY CERTIFICATION FOR CALENDAR YEAR _____

The following Consultant Agreement information is considered Confidential:

☐ Consultant Firm Operating Cost

- Consultant Quality Plan
- Employee Wages
- Overhead Rates
- Other _____

☐ Consultant Selection Procedure

- Shortlisted Consultants – until approved in ECMS
- Final Ranking Information
- Final Ranking – until approved in ECMS
- Other _____

☐ Department Estimate

- Estimated Work-hours
- Other _____

I understand that the above items are considered Confidential. By signing this Confidentiality Certification, I agree not to share any of this information except as necessary for the performance of my assigned duties.

I, further, understand that any violation of this certification may result in disciplinary action, or termination of Legal Contract.

By signing this selection documentation I am certifying that neither I nor any members of my immediate family have a potential conflict of interest with any of the submitted firms.

X _____

Signature

_____ Date

_____ Printed Name

_____ Phone

_____ Consultant Management Project Manager

OR

_____ District

_____ Unit

DBE COMMERCIALLY USEFUL FUNCTION (CUF) REPORT

[Appendix 5B](#)
Publication 93 (12-16)

Agreement Number: _____ County: _____ SR: _____ Section: _____

Project: _____ Part/WO: _____

Prime Consultant Firm: _____

Prime Project Manager: _____

DBE Consultant Firm: _____

A DBE performs a Commercially Useful Function when it is responsible for execution of the work of the agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

1. Is the DBE firm accomplishing the work with its own work force?

☐ Yes

☐ No

Provide details _____

2. Were employees switched to satisfy the DBE goal?

☐ No

☐ Yes

Provide details _____

Maintain completed form in the project files and continue to monitor the DBE firm to ensure that Commercially Useful Function requirements are being met.

For any unsatisfactory responses, notify the prime consultant immediate, and forward this form to the Bureau of Project Delivery, Contract Management Chief immediately.

PROJECT MANAGER

X _____

Signature

Date

Phone



EVALUATION OF OVERALL DBE GOAL ATTAINMENT NOTICE

Note: To be initiated by the prime consultant when the DBE Goal was not attained. Form must be submitted within 30 calendar days of the Agreement Expiration Date.

Agreement Number: _____ District: _____ County: _____

Project Description: _____ DBE Goal: _____%

Prime: _____ Agreement Expiration Date: _____

Total Agreement Amount: \$_____ Total DBE Amount: \$_____ DBE Attained: _____%

Attach a written statement addressing the circumstances that relate to the non-attainment of the DBE Goal. Include responses to the following, as needed, as well as any additional information that is deemed necessary.

- Did an investigation with other DBE subconsultant(s) as part of the original team occur?

Or

Was a request for an official substitution for a DBE subconsultant(s) that is (are) equal to or better to the original DBE subconsultant submitted?

- Did a supplement/work order eliminate or reduce the amount of work anticipated for the DBE subconsultant. If so, what was the reason for this change?

INITIATING ORGANIZATION - Findings and Recommendations:

X _____

PHASE I - CONSULTANT AGREEMENT CHIEF

☐ Approve ☐ Disapprove

X _____
Date

☐ Accept Determination ☐ Appeal to Phase II

Consultant Representative Date

PHASE II - BEO DIRECTOR

☐ Approve ☐ Disapprove

X _____
Date

☐ Accept Determination ☐ Appeal to Phase III

Consultant Representative Date

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

Date of form

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Insurance producer Address of insurance producer	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">CONTACT NAME:</td> <td colspan="2">Contact at insurance company</td> </tr> <tr> <td>PHONE (A/C, No, Ext)</td> <td>Insurance co. phone number</td> <td>(A/C, No): insurance fax #</td> </tr> <tr> <td>E-MAIL ADDRESS:</td> <td colspan="2">insurance company contact person's fax number</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER(S) AFFORDING COVERAGE</td> <td style="width: 20%;">NAIC #</td> </tr> <tr> <td>INSURER A:</td> <td>Insurer company NAIC #</td> </tr> <tr> <td>INSURER B:</td> <td>If additional companies are needed their NACI #</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	CONTACT NAME:	Contact at insurance company		PHONE (A/C, No, Ext)	Insurance co. phone number	(A/C, No): insurance fax #	E-MAIL ADDRESS:	insurance company contact person's fax number		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A:	Insurer company NAIC #	INSURER B:	If additional companies are needed their NACI #	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
CONTACT NAME:	Contact at insurance company																							
PHONE (A/C, No, Ext)	Insurance co. phone number	(A/C, No): insurance fax #																						
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INSURER A:	Insurer company NAIC #																							
INSURER B:	If additional companies are needed their NACI #																							
INSURER C:																								
INSURER D:																								
INSURER E:																								
INSURER F:																								
INSURED PRIME Consultant company (this does not need to be competed by subs) Prime company's address																								

COVERAGES **CERTIFICATE NUMBER:** 7506662 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER:			policy number	date eff	date exp	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ EACH OCCURRENCE \$ AGGREGATE \$ PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						
	UMBRELLA LIAB EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE DED RETENTION \$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						
B	Professional Liability Insurance (not necessary for Construction Inspection)			policy number	date eff	date exp	amount of insurance (we do not specify minimum)

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Must include:
 Project number - E#####
 PennDOT is an additional insured for the general liability.
 Provide notice to the Department, as an additional insured, at least thirty (30) days in advance of cancellation for reasons other than nonpayment of premium.
 Provide a notice to the Department, as an additional insured, at least fifteen (15) days in advance of cancellation for nonpayment of premium.

CERTIFICATE HOLDER

CANCELLATION

PennDOT - this can either be the District Office or:

PennDOT
 Contract Management Section
 400 North Street, 7th Floor
 Harrisburg, PA 17120

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

this can be signed and scanned or typed.



SUPPLEMENTAL AGREEMENT REQUEST

Agreement Number: _____ Part: _____ Supplement: _____

District: _____ County: _____ SR: _____ Section: _____

SPN: _____ Program: _____ Appropriation: _____

FPN: _____ % Federal _____ % State

Consultant: _____ MPMS Number: _____

Type of Service: _____ Method of Payment: _____

Scheduled Letting Date: _____

District Estimated Work-hours: _____

Consultant Estimated Work-hours: _____

% Work-hours Consultant is (over) District: _____ %

% Work-hours Consultant is (under) District: _____ %

% of Work within existing Scope of Work: _____ %

Present Agreement Amount (this Part): \$ _____

Estimated Supplemental Amount (this Part): \$ _____

Proposed Agreement Amount (this Part): \$ _____

PMC Approved Cost (this Phase): \$ _____

Is PMC Action Required? ☐ No ☐ Yes (*District to initiate*)

Present Total Agreement Amount: \$ _____

Estimated Total Supplemental Amount: \$ _____

Proposed Total Agreement Amount: \$ _____

Proposed Total DBE Participation Amount: \$ _____

DBE Participation Achieved (including supplement): % (*All Parts of Agreement*)

DBE Participation Required by Agreement: % (*All Parts of Agreement*)



PROJECT SPECIFIC WORK ORDER REQUEST

Agreement Number: _____ Work Order: _____ Amendment: _____

District: _____ County: _____ SR: _____ Section: _____

SPN: _____ Program: _____ Appropriation: _____

FPN: _____ % Federal _____ % State

Consultant: _____ MPMS Number: _____

Type of Service: _____ Method of Payment: _____

Scheduled Letting Date: _____

District Estimated Work-hours: _____

Consultant Estimated Work-hours: _____

% Work-hours Consultant is (over) District: _____ %

% Work-hours Consultant is (under) District: _____ %

% of Work within existing Scope of Work: _____ %

Present Agreement Amount (this Part): _____ \$

Estimated Supplemental Amount (this Part): _____ \$

Proposed Agreement Amount (this Part): _____ \$

PMC Approved Cost (this Phase): _____ \$

Is PMC Action Required? _____ ☐ No ☐ Yes (*District to initiate*)

Present Total of Work Orders: _____ \$

Estimated Total of Work Orders: _____ \$

Total Open End Agreement Amount: _____ \$

Proposed Total DBE Participation Amount: _____ \$

DBE Participation Achieved (including this W.O.): _____ % (*All W.O.'s*)

DBE Participation Required by Agreement: _____ % (*All W.O.'s*)



POLICY AND PROCEDURE FOR CONSULTANT SELECTION

The following procedures have been adopted by the _____ as authorized by action of the _____
Name of Municipality
_____ on _____ date. These procedures shall be used for the orderly determination
Mayor, Supervisors, Council, etc. of the need to use consulting engineering firms, qualification and selection of firms, and general administration and monitoring
of the engineering agreements.

Upon being notified of the need to initiate engineering services on a project, the _____
Director of Public Works, Municipal Engineer, etc. shall analyze the _____ forces to determine if the services of a consulting firm are necessary. The analysis
Municipality regarding the need to engage consultants will be documented in the project file. (If the Municipality has no capability to provide in-house engineering services, this paragraph should be revised or deleted accordingly).

A detailed scope of work, describing the project, its location, and services required, will be prepared (if the Municipality, Township, etc., has the capability to prepare an engineering cost estimate, one should be prepared to compare with the consultant's proposal).

An advertisement including the DBE Goal Request will be submitted in ECMS to PennDOT's Contract Management Section. Advertising the request for statements of interest from consulting firms interested in performing the required engineering services is governed by municipal Home Rule Charters, codes or statutes. The advertisement may need to appear in at least one newspaper of general circulation.

The advertisement will include the following information:

- a) Location and brief description of the required engineering services.
- b) Indication of the method of procurement as competitive negotiations;
- c) A statement that the _____ encourages responses from small firms, minority firms, and firms who have
Municipality not previously performed work for the _____
Municipality.
- d) The Disadvantaged Business Enterprise Goal, if any. Or nondiscrimination provisions to encourage the prime to notify DBE subconsultants of contracting opportunities associated with the agreement and solicit their participation, if DBE Goals are not required for the agreement.
- e) A statement that indicates whether the modified or normal selection method will be used.
- f) A list, in order of importance, of the selection criteria against which the statements of interest will be reviewed.
- g) A requirement that responding consultants must be registered business partners in ECMS with their qualification packages submitted prior to the submission of the SOI.
- h) Outside of ECMS, include contact information for project discussions and a description of the method of discussion. For ECMS, a statement must be included in the advertisement stating that all questions and answers are required to go through ECMS's "Questions and Responses" forum. If oral presentations are required, it must be stated in the advertisement.
- i) Cut-off time for response to the advertisement (minimum of two weeks).

Note: For a Municipal Engineer advertisement, the Municipality has the option of submitting their advertisements for approval electronically in ECMS or by email, for newspaper advertising, as required by their Home Rules Charters, and for publishing paper advertisements in ECMS to ECMS_Local_Advertisements@pa.gov.

Three consultants will be selected from those consultants who submit statements of interest. A qualification selection committee, consisting of a minimum of three people:

- | | |
|--|--|
| a. _____ or designee,
Selection Committee title | c. _____ or designee,
Selection Committee title |
| b. _____ or designee,
Selection Committee title | d. _____ or designee,
Selection Committee title |

shall review the qualifications of consultants who submit statements of interest as well as their responsiveness to the requirements of the advertisement. Documentation of consultants considered and the committee's recommendation shall be maintained in the project file. The committee shall document the reasons for their recommendation.

For selecting a consultant to perform bridge inspection, construction inspection agreements, or noncomplex or selected moderately complex projects as defined in DM1, or for selecting a consultant as a Municipal Engineer a modified process may be used, and a ranking will be determined based on a review of the statements of interest.

For all other Agreements the normal selection method should be used. The _____
Mayor, Director of Public Works, Council, etc.
shall review the recommendations of the qualification committee and select three firms to be recommended to the Pennsylvania Department of Transportation (hereinafter called the Department) as the consultants to prepare a proposal. Upon receipt of the approval of the consultants from the Department, a technical proposal shall be requested from the consultants.

The request for technical proposals shall include a brief written scope of work. The consultants will be invited to a scope of work meeting at which time the project will be explained in detail. Representatives from the Department will be invited to the meeting. The consultants will be advised of the applicable Federal regulations, review procedures, contract format, and administration. A copy of the Department's Publication 442 will be supplied to the consultants with the understanding that the specifications will be made a part of the contract. The _____
Municipality
limitations of profit, wages, etc., will be explained. The consultants will be given a name and phone number to contact in case they would have any questions during the preparation of their proposal.

Upon receipt of the technical proposals from the consultants, the qualification committee shall review the technical proposals and make a recommendation for the ranking of the shortlisted consultants for the purpose of negotiating an engineering agreement. The committee shall document the reasons for their recommendation.

The Municipality shall conduct discussions with the firms to consider anticipated concepts and compare alternative methods for furnishing services.

For both modified and normal methods of selection, the _____
Mayor, Council, Board of Supervisors, etc.
shall review the recommendation of the qualification committee and rank, in order of preference, the firms. The ranking will be recommended to the Department for approval. Documentation supporting the ranking of the consultants shall be forwarded to the Department when requesting approval of the consultant's ranking. The Department shall approve and/or comment on the municipalities recommended ranking.

The municipality will request a price proposal from the approved first ranked firm and submit the appropriate number of copies to the Department.

The Department will conduct the pre-award evaluation and schedule and hold negotiations, if necessary.

The agreement will be prepared by the Department and circulated for signatures.

It is understood that the consultant cannot begin work until the Federal authorization has been obtained, and both the engineering Agreement and the Reimbursement Agreement have been fully executed, and notification of this fact has been received by the _____ .
Municipality

The _____ will designate a person to perform liaison activities between the _____ ,
Mayor, Council, Board of Supervisors, etc. Municipality
the Department, and the consultant.

The _____ will enter into a reimbursement agreement with the Department setting forth the methods for reimbursing
Municipality
the federal funds to the _____ . The reimbursement agreement will be prepared by the Department.
Municipality

During the life of the engineering agreement, monthly (or at other appropriate times) meetings will be held with the consultant and the designated liaison person. The Department will be invited to attend these meetings. Documentation of these meetings will be included in the project file.

Partial payment invoices for work performed will be processed as provided by Publication 442. After review of the invoices by the _____ , it will be paid. The invoice will in turn be forwarded to the Department with
responsible individual of the Municipality
recommendation for reimbursement of the Federal and/or State share.

Prior to termination of services and payment of the final invoice, a joint review will be made by the Department and the _____ to insure the propriety of claims and that all terms and conditions of the contract have been satisfied.
Municipality
Documentation of these findings will be submitted to the Department with the final invoice.

The _____ designated liaison person will complete copies of the Form D-429, "Past Performance Report for
Municipality's
Consultant Engineers", see Appendix 7F or Form D-429 CI, "Past Performance Report for Consultant Engineers Construction Inspection", see Appendix 7G. For projects that were entered in ECMS, the evaluations can be completed in ECMS.

It is understood and made part of these procedures that the employees of the _____ will neither solicit nor
Municipality
accept gratuities, favors, or anything of monetary value from consultants or contractors or potential consultants or contractors. Violators of said standards will be subject to dismissal from their employment with the _____ , by order of the
Municipality

Mayor, Council, Board of Supervisors, etc.)

Now, Therefore Be It Resolved that the _____ of the _____ have adopted these
Mayor, Supervisors, Etc. Municipality
policies and procedures for engineering by consultants and will adhere to the rules and regulations of the Department.

NOW, THEREFORE BE IT FURTHER RESOLVED that the _____ this 15 day of
_____, 20 _____ , on behalf of the _____ hereby accept the aforesaid policies and procedures.
Mayor, Supervisors, Etc. Municipality

UPON MOTION DULY MADE and seconded, the above resolution as adopted the day and year set forth above.

ATTEST:

Municipality

BY _____

BY _____

Title

Title

Advertisement for Engineering Services

Municipal Engineer

(Enter Municipality, Enter County County)

Request for Statements of Interest/Statement of Qualifications

Notice is hereby given that (Enter Municipality) will retain an engineering firm to act as the (Enter County/Borough/Township's Municipal Engineer). The selection of the Municipal Engineer will be valid for no more than 5 years. The firm must be a registered ECMS Business Partner. The scope of the services includes but is not limited to (applicable)

The (Enter Municipality) will establish an order of ranking of a minimum of 3 firms for the purpose of negotiating an Agreement based on the (Enter Municipality)'s evaluation of the Statements of Interest received in response to this solicitation. The final ranking will be established directly from the Statements of Interest. Technical proposals will not be requested prior to the establishment of the final ranking. The Statements of Interest will be limited to ten (10) pages and shall be presented utilizing ECMS General Requirements in four (4) hard copies and two (2) copies on disc. (revise as necessary)

The (Enter Municipality) will utilize the modified selection process in their determination for professional engineering services. The method of procurement will be competitive negotiations.

The following factors, listed in order of importance, will be considered by the (Enter County/Borough/Township) during the evaluation of the firms submitting Statements of Interest:

1. Professional qualifications necessary for satisfactory performance of potentially required services;
 2. Any specialized experience and technical competence in the type of work that may be required;
 3. The firm's capacity, or availability of technical staff, to accomplish work in required time frames;
 4. Knowledge of the Municipality; and
 5. Specific experience and/or qualifications related to any other appropriate evaluation criteria.
- (Revise this as necessary for municipality's needs)
(These can be revised as necessary. However, the firm's location, and firm's costs cannot be a criteria. If the municipality desires, the percentage weights for each criteria may be added)

The (Enter Municipality) encourages responses from small firms, minority firms, and firms that have not previously performed work for the (Enter County/Borough/Township). For federally funded agreements assigned to the Municipal Engineer exceeding \$100,000, there may be a DBE goal requirement. If prime is not a DBE firm, a DBE engineering firm may be selected specific to each project need and can be added at a later time upon approval by the (Enter County/Borough/Township). Specific DBE firms do not need to be identified in the Statement of Interest.

The assignment of the above services will be made to one of the firms responding to this notice, but (Enter the Municipality) reserves the right to reject all statements of interest submitted, to cancel the solicitations requested under this notice, and/or to re-advertise solicitation for these services.

Firms interested in performing this work are invited to submit a Statement of Interest to (Enter Contact's Name, Enter Contact's Title, Enter Contact's Address). All Statements of Interest must be submitted to the (Enter Municipality by Enter time Enter am/pm on Enter Date).

**MUNICIPAL ENGINEER
ADVERTISEMENT EXAMPLE
(Complete yellow highlighted area)**

Firms submitting a Statement of Interest document that does not comply with the above requirements will not be considered.

Project discussion will be in the form of (Enter "Questions and Answers", "Oral Discussions", or other method (specify)).

Contact information for project discussions:

Enter Contact person's name
Enter Contact Person's email address
Phone Enter Contact Person's phone



DISTRICT ESTIMATE SUMMARY FOR MUNICIPAL AGREEMENT

Agreement Number: _____ Part: _____ Municipality: _____

District: _____ County: _____ SR: _____ Section: _____

SPN: _____ Allot.: _____ FPN: _____

Local Project Name: _____ Page _____ of _____

Non-Professional Services

a. Core Borings	_____
b. Rigging	_____
c. Traffic Control	_____
d.	_____
e.	_____
f.	_____
g.	_____
h.	_____
Total	\$ 0.00

Direct Costs Other Than Payroll

a. Reproductions	_____ Sheets @ _____/Sheet =	\$ 0.00
b. Mileage	_____ Miles @ _____/Mile =	\$ 0.00
c.	_____	
d.	_____	
e.	_____	
f.	_____	
g.	_____	
h.	_____	
Total		\$ 0.00

Total Direct Payroll _____

Overhead (_____ %) \$ 0.00

Subtotal \$ 0.00

Direct Costs other than Payroll \$ 0.00

Escalation _____

Non-Professional Services \$ 0.00

Profit/Net Fee (_____ %) _____

Total Part Estimate \$ 0.00

[illegible]



MUNICIPAL REQUEST FOR SUPPLEMENTAL AGREEMENT

Agreement Number: _____ Supplement: _____ Municipality: _____

District: _____ County(s): _____ SR: _____ Section: _____

Local Project Name: _____ Page: _____ of _____

Consultant: _____

Part: _____ Scheduled Let Date: _____

MPMS No: _____ SPN: _____ Program: _____ Appro.: _____

Fed. Project No.: _____ %Fed.: _____ %State: _____ %Local: _____

Type of Engineering Service Requested: _____

Method of Payment (this Part):

☐ Cost Plus Fixed Fee ☐ Lump Sum ☐ Cost per Unit of Work ☐ Specific Rate

Sponsor Estimated Work-hours: _____

Consultant Estimated Work-hours: _____

% Work-hours Consultant is (☐ Over ☐ Under) Sponsor: _____ %
(Check One)

% of Work within existing Scope of Work: _____ %

	This Part	Total Agreement
Present Agreement Amount:	\$ _____	\$ _____
Estimated Supplement Amount:	\$ _____	\$ _____
Proposed Agreement Amount:	\$ _____	\$ _____
PMC Approved Cost:	\$ _____	
Is PMC Action Required: ☐ No ☐ Yes (District will initiate)		
Proposed DBE Participation Amount (Including Supplement)		\$ _____
Percentage DBE Participation Achieved (Including Supplement)		_____ %
Percentage DBE Participation Required by Agreement		_____ %



NOTICE TO PROCEED (NTP) SAMPLE LETTER

OS-600 (1-13)



pennsylvania
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us

Insert Date

Consultant Project Manager
Consultant Company Name
Consultant Company Address
Consultant Company City, State, Zip

Dear *Mr./Mrs./Ms. Project Manager*

This is your official notice to proceed with work and services for the following:

Agreement No. _____
Part No. _____
Notice to Proceed Date: _____
Completion Date: _____
State Project No. _____
Program No. _____
Federal Project No. _____

Prior to submitting an invoice, please review the Estimated Progress Report for this project and, if required, correct the Completion Date, State Project No., Program No., and/or Federal Project No.

{Any additional instructions you want to give the Engineer, etc.}

Sincerely,

District Executive
Engineering District XX-0

#####/INT/int

BCC: Contract Management Section, 7th Floor, Keystone Building



PAST PERFORMANCE REPORT FOR CONSULTANT ENGINEERS (NON-CONSTRUCTION INSPECTION)

☐ Interim: _____ % Complete

Date: _____

☐ Final

Agreement Number: _____ Part: _____ Type of Work: _____

District: _____ County: _____ SR: _____ Section: _____

SPN: _____ Allot.: _____ FPN: _____

Consultant: _____

Organization and Management

1. Technical Capability of Personnel

2. Adequacy of Supervision

Poor	Satisfactory	Good
☐	☐	☐
☐	☐	☐

Cooperation and Coordination

3. Cooperation with Department

4. Coordination with Agencies, Public, Utilities

5. Attitude toward the Project

Poor	Satisfactory	Good
☐	☐	☐
☐	☐	☐
☐	☐	☐

Work Performance

6. Completeness of Submissions

7. Accuracy of Invoices

8. Quality of Work Products

Poor	Satisfactory	Good
☐	☐	☐
☐	☐	☐
☐	☐	☐

9. Was work completed on time?

10. If No. 9 is No, was it the fault of the consultant?

11. If No. 10 is Yes, was the letting delayed?

Yes	No
☐	☐
☐	☐
☐	☐

12. Did the consultant file any claims?

Yes	No
☐	☐

Reason for claim:

13. Was it necessary to supplement the agreement to cover additional funds needed to complete the scope of work?

Yes	No
☐	☐

14. If No. 13 is Yes, was all of the increase due to a change in scope, complexity, or duration directed by the Department or caused beyond control of the consultant such as bidding of core borings or riggings?

Yes	No
☐	☐

15. Indicate the names of any of the consultant's employees whose performance was outstanding on this project and what their contribution was. Similarly, indicate the names of those whose performance was substandard and why.

16. Remarks:

DEPARTMENT OF TRANSPORTATION

PROJECT MANAGER

Date

ASSISTANT DISTRICT EXECUTIVE / DIVISION CHIEF

Date

DISTRICT EXECUTIVE / BUREAU DIRECTOR

Date

CONSULTING ENGINEERING FIRM

I/We acknowledge that I/we have read this report and have discussed it with the District. My/Our signature(s) does not necessarily mean that I/we agree with the report.

PROJECT MANAGER

Date

PRINCIPAL

Date

Instructions for Completion of Form D-429

This form is an evaluation of the past performance of consulting engineers and is used for comparison purposes during the selection of engineering firms for various assignments by the Department of Transportation. For comparisons between firms the Central Office will reduce the form to a numerical rating in accordance with the following chart. Items 9 through 11 and 13 through 14 will each be given one score for each group of items:

Item	Poor	Satisfactory	Good	Yes	No
1	0	6	10	-	-
2	0	6	10	-	-
3	0	6	10	-	-
4	0	5	8	-	-
5	0	6	9	-	-
6	0	8	12	-	-
7	0	4	6	-	-
8	0	10	14	-	-
9	-	-	-	10	0
10	-	-	-	0	6
11	-	-	-	0	4
12	-	-	-	0	4
13	-	-	-	0	7
14	-	-	-	7	0

Complete the form heading. The "Type of Work" should be a brief statement such as "Modified Design Location Study and Final Design of a Bridge Replacement." By placing an "X" in the appropriate box, indicate if the report is an interim or final report.

A **Final Report** must be submitted to the Central Office no later than the final invoice for the last subconsultant. Note only that one "Final" report is to be submitted for an agreement.

An **Interim Report** may be submitted at any time deemed appropriate by the District, and is an excellent means of conveying to the consultant the District's displeasure at the performance, and conversely praise when a job is being done well.

After the form has been completed, it is to be discussed with and signed by representatives of the firm. The Project Manager and/or Principal should sign in the proper space acknowledging that they have read the report and discussed it with the District. It is up to each District or rating organization to schedule their own interview or discussion with the consultant with consideration for the fact that the form is due in the Central Office with the final invoice. There may be some consultants who will refuse to sign the report, particularly if it is adverse. In that case, either in Item 16 (Remarks) or following the space for signatures by the Engineering Firm, place the following certification: "I certify that representatives of the Engineering Firm have refused to sign this report." This certification is to be followed by the District Executive's signature. These instructions are part of the form and are to be made available to the consultants during their review.

FINAL REPORTS

For questions 1 through 14, place an "X" in the appropriate box.

QUESTION 1

- Poor - technical capability of personnel assigned to the project was generally unsatisfactory. At least one technical employee should be cited in Question 15.
- Satisfactory - technical capability was average or generally satisfactory.
- Good - technical capability was generally above average or outstanding. At least one technical employee should be cited in Question 15.

QUESTION 2

- Poor - supervision of personnel was generally lacking with respect to keeping the project on track at minimum cost. Technical personnel were directed improperly by the firm's management. At least one management employee should be cited in Question 15.
- Satisfactory - supervision of personnel was average.
- Good - supervision was above average. At least one management employee should be cited in Question 15.

QUESTION 3

- Poor - the consultant did not work closely with the Department, keeping the District abreast of progress and problems encountered.
- Satisfactory - the consultant worked closely with the Department, kept the District abreast of progress and problems encountered.
- Good - the consultant worked very closely with the Department, kept the District abreast of progress, anticipated problems and resolved them ahead of time.

QUESTION 4

- Poor - the consultant failed to properly coordinate with others resulting in delay or antagonism toward the consultant and/or the Department.
- Satisfactory - the consultant properly coordinated with others with no subsequent delays.
- Good - the consultant coordinated closely with others, anticipating problems and resolving them ahead of time.

QUESTION 5

- Poor - the consultant's attitude was lax toward the project with no evident commitment to completing the work on schedule.
- Satisfactory - the consultant's attitude toward the project was satisfactory with a commitment to complete the work on schedule.
- Good - the consultant's attitude toward the project was enthusiastic with a commitment to complete the work ahead of schedule. The consultant may not have completed work ahead of schedule, but had indicated by his actions that was his goal.

QUESTION 6

- Poor - submissions to the Department were incomplete and may not have been on time.
- Satisfactory - submissions were complete and on time.
- Good - submissions were complete and accurate with adequate back-up documentation and may have been submitted ahead of schedule. Little or no corrective action was required.

QUESTION 7

- Poor - invoices not accurate and were frequently returned for correction.
- Satisfactory - invoices generally accurate and were infrequently returned for correction.
- Good - invoices submitted promptly and were accurate with no problems due to payroll rate and no arithmetic errors.

QUESTION 8

- Poor - the quality and/or accuracy of plans and/or other work products submitted was below acceptable standards.
- Satisfactory - the quality and/or accuracy of work products submitted was acceptable and met Department standards.
- Good - the quality and/or accuracy of work products submitted exceeded Department standards with only minor corrections needed.

QUESTION 9

Indicate if work was completed and submitted within established timeframes.

QUESTION 10

Answer this question only if the answer to Question 9 was "No."

QUESTION 11

Answer this question only if the answer to Question 10 was "Yes."

QUESTION 12

Indicate if the consultant filed any claims.

QUESTION 13

Indicate if the total paid or due the consultant exceeded the original agreement amount. The intent here is to determine if the consultant required any Supplemental Agreements which increased the engineering cost to the Department above the amount of the original agreement.

QUESTION 14

Answer this question only if the answer to Question 13 was "Yes." The intent of this question is to determine if any of the cost increase was due to additional funds needed to complete the scope of work which could have and/or should have been controlled by the consultant.

QUESTION 15

The Department wishes to know for further selection purposes the names of outstanding performers and those whose performance was substandard or detrimental to the project.

QUESTION 16

Add any additional remarks considered pertinent to the project and related to performance of the consultant. If there are no additional comments, write "None."

INTERIM REPORTS

Comparisons between firms will be made on a numerical basis. It is therefore, important that all items be completed. Most of the questions lend themselves readily to an interim report, but some do not. The latter should be completed as follows:

QUESTION 8

It must be recognized that in an interim report the project may not be advanced sufficiently to have final work products completed and submitted.

- | | |
|--------------|---|
| Poor | - the quality and/or accuracy of plans and/or other work products submitted to date was below acceptable standards. |
| Satisfactory | - the quality and/or accuracy of work products and/or other submissions to date was acceptable and met Department standards. |
| Good | - the quality and/or accuracy of work products and/or submissions to date exceeded Department standards with only minor corrections needed. |

QUESTION 9

Since the project has not been completed, indicate if the work was on schedule rather than completed and submitted on time.

QUESTION 11

Indicate if the letting has been or in the opinion of the rating organization will be delayed.

QUESTION 13

Indicate if the anticipated total cost will exceed the original agreement amount.



PAST PERFORMANCE REPORT FOR CONSULTANT ENGINEERS (CONSTRUCTION INSPECTION)

[Appendix 7G](#)
Publication 93 (12-16)

☐ Interim: _____ % Complete

Date: _____

☐ Final

Agreement Number: _____ Part: _____ Type of Work: Construction Inspection

District: _____ County: _____ SR: _____ Section: _____

SPN: _____ Allot.: _____ FPN: _____

Consultant: _____

I. Performance

1. Cooperation with Department
2. Dependability (Staffing & Timeliness)
3. Technical Capability
4. Specification Enforcement

Poor	Satisfactory	Good
☐	☐	☐
☐	☐	☐
☐	☐	☐
☐	☐	☐

II. Documentation

1. Records
2. Estimates
3. Contract Compliance

Poor	Satisfactory	Good
☐	☐	☐
☐	☐	☐
☐	☐	☐

III. Overall Evaluation

Poor	Satisfactory	Good
☐	☐	☐

IV. Outstanding employees. Indicate the names of any of the consultant's employees whose performance was outstanding on this project and what their contribution was. Similarly, indicate the names of those whose performance was substandard and why.



PAST PERFORMANCE REPORT FOR CONSULTANT ENGINEERS (CONSTRUCTION INSPECTION)

*Appendix 7G
Publication 93 (12-16)*

V. Remarks

DEPARTMENT OF TRANSPORTATION

PROJECT MANAGER

Date

ASSISTANT DISTRICT EXECUTIVE / DIVISION CHIEF

Date

DISTRICT EXECUTIVE / BUREAU DIRECTOR

Date

CONSULTING ENGINEERING FIRM

I/We acknowledge that I/we have read this report and have discussed it with the District. My/Our signature(s) does not necessarily mean that I/we agree with the report.

PROJECT MANAGER

Date

PRINCIPAL

Date



PAST PERFORMANCE REPORT FOR CONSULTANT ENGINEERS (CONSTRUCTION INSPECTION)

Instructions for Completion of Form D-429A

This form is an evaluation of the past performance of consulting engineers and is used for comparison purposes during the selection of engineering firms for various assignments by the Department of Transportation. For comparisons between firms the Central Office will reduce the form to a numerical rating in accordance with the following chart:

Item	Poor	Satisfactory	Good
I-1	0	5	10
I-2	0	15	20
I-3	0	15	20
I-4	0	15	20
II-1	0	8	10
II-2	0	7	10
II-3	0	7	10

Complete the form heading. By placing an "X" in the appropriate box, indicate if the report is an interim or final report.

A **Final Report** must be submitted to the Central Office no later than the final invoice for the last subconsultant. Note only that one "Final" report is to be submitted for an agreement.

An **Interim Report** may be submitted at any time deemed appropriate by the District, and is an excellent means of conveying to the consultant the District's displeasure at the performance, and conversely praise when a job is being done well.

After the form has been completed, it is to be discussed with and signed by representatives of the firm. The Project Manager and/or Principal should sign in the proper space acknowledging that they have read the report and discussed it with the District. It is up to each District or rating organization to schedule their own interview or discussion with the consultant with consideration for the fact that the form is due in the Central Office with the final invoice. There may be some consultants who will refuse to sign the report, particularly if it is adverse. In that case, either in Item V (Remarks) or following the space for signatures by the Engineering Firm, place the following certification: "I certify that representatives of the Engineering Firm have refused to sign this report." This certification is to be followed by the District Executive's signature. These instructions are part of the form and are to be made available to the consultants during their review.



PAST PERFORMANCE REPORT FOR CONSULTANT ENGINEERS (CONSTRUCTION INSPECTION)

For questions I-1 through III, place an "X" in the appropriate box.

QUESTION I-1

- Poor - the consultant's inspectors did not work closely with the Department, keeping the District abreast of progress and problems encountered.
- Satisfactory - the consultant's inspectors worked closely with the Department, kept the District abreast of progress and problems.
- Good - the consultant's inspectors worked very closely with the Department, kept the District abreast of progress, anticipated problems and resolved them ahead of time.

QUESTION I-2

- Poor - the consultant's staff's attitude was lax toward the project with no evident commitment to completing records on schedule.
- Satisfactory - the consultant's attitude toward the project was satisfactory with a commitment to complete records on schedule.
- Good - the consultant's attitude toward the project was enthusiastic with a commitment to have records completed ahead of schedule.

QUESTION I-3

- Poor - technical capability of personnel assigned to the project was generally unsatisfactory. At least one technical employee should be cited in Item IV.
- Satisfactory - technical capability was average or generally satisfactory.
- Good - technical capability was generally above average or outstanding. At least one technical employee should be cited in Item IV.

QUESTION I-4

- Poor - specification enforcement was generally lackluster with respect to the inspector's attitude. At least one employee should be cited in Item IV.
- Satisfactory - specification enforcement was average.
- Good - specification enforcement was above average. At least one employee should be cited in Item IV.

QUESTION II-1

- Poor - records were incomplete and may not have been on time.
- Satisfactory - records were complete and on time.
- Good - records were complete and accurate with adequate backup documentation and may have been completed ahead of schedule. Little or no corrective action was required.

QUESTION II-2

- Poor - estimates not accurate and were frequently returned for correction.
- Satisfactory - estimates generally accurate and were infrequently returned for correction.
- Good - estimates submitted promptly and were accurate with no problems due to payroll rate approvals, no arithmetic errors.

QUESTION II-3

- Poor - the consultant's inspectors failed to properly assist the Department in obtaining compliance with the labor standards, safety and accident provisions and equal opportunity provisions of the construction contract.
- Satisfactory - the consultant's inspectors properly assisted the Department.
- Good - the consultant's inspectors enthusiastically assisted the Department.



CERTIFICATE OF COMPLETION (FEDERALLY FUNDED PROJECTS ONLY)

Agreement Number: _____ County: _____ SR: _____ Section: _____

SPN: _____ FPN: _____

Part/Work Order: _____ Phase Number: _____ Total Invoiced Amount \$: _____

The Engineering firm, _____, in our judgment has completed all required work and services on this Federal Project in a satisfactory manner as reviewed and accepted by the Department's appropriate technical/engineering personnel. Services were provided by the Engineering firm for the total invoiced amount indicated which was fair and reasonable.

The Part/Work Order indicated above was executed on _____ and the Department was billed the amount indicated above on the indicated Part/Work Order from _____ to _____. This Part/Work Order is currently closed by the Department.

ATTEST, COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

District Executive

Date

Verified:

Director, Bureau of Project Delivery

Date

Supplemental information to be provided by the District Executive. (Check the appropriate box and indicate the SPN and FPN, if applicable).

☐ NBIS Bridge Inspection

☐ Not Applicable

☐ Companion Engineering Agreement _____

☐ Not Applicable

☐ Right-of-Way Acquisition has not begun

☐ Right-of-Way Acquisition has begun SPN: _____ FPN: _____

☐ Not Applicable

☐ Construction has not begun

☐ Construction has begun SPN: _____ FPN: _____

☐ Not Applicable